



1 [Option Agreement - Purchase the Hoedown Yard - Illinois and 22<sup>nd</sup> Streets - \$8,283,726]

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3 **Resolution approving an option agreement to Purchase the Hoedown Yard at the**  
4 **northeast corner of Illinois and 22<sup>nd</sup> Streets from Pacific Gas and Electric Company for**  
5 **\$63.37 per square foot or approximately \$8,283,726.**

6  
7 WHEREAS, Pacific Gas & Electric ("PG&E") proposes to construct a new, single  
8 circuit, 230 kV transmission line between its Embarcadero Substation and its Potrero  
9 Substation, along onshore and submerged land in the Port's jurisdiction generally within the  
10 area bounded by Pier 28½ and portions of the shoreline at the foot of 23rd Street (the  
11 "Project"), to increase reliability of electric service to downtown San Francisco and provide  
12 operational flexibility, as further described in the June 5, 2014, Port Commission staff report  
13 on file with the Clerk of the Board of Supervisors in File No. 140750; and

14 WHEREAS, In consideration of the Port's agreement to enter into the License with  
15 PG&E and City's agreement to enter into other agreements required for the Cable Project,  
16 PG&E is granting City an exclusive and irrevocable option ("Option") to purchase  
17 approximately 3 acres located at the northeast corner of Illinois and 22<sup>nd</sup> Streets (the "**Option**  
18 **Property**") for \$63.37 per square foot or approximately \$8,283,726, with the final price to be  
19 established by a survey of the Option Property (the "**Purchase Price**"), on the terms set forth  
20 in an Option Agreement and the attached form of Purchase and Sale Agreement on file with  
21 the Clerk of the Board of Supervisors in File No. 140750; and

22 WHEREAS, On March 5, 2014, pursuant to Resolution No. 54-14, the Board of  
23 Supervisors endorsed the Revised Term Sheet for the Project, including the terms for the  
24 Option; and

1           WHEREAS, The Department of Real Estate, in consultation with Port staff, negotiated  
2 the Option consistent with the terms of Board of Supervisors Resolution 54-14; and

3           WHEREAS, City will exercise the Option and enter into the Purchase and Sale  
4 Agreement with PG&E for the Option Property only if the Board of Supervisors has authorized  
5 the exercise of the Option under one of the following circumstances: 1) the Option is  
6 transferred to a third party that agrees to pay the full Purchase Price for and assumes all  
7 environmental liabilities and other obligations related to the Option Property as described in  
8 the Option; or 2) a City department proposes a public use for the Option Property that  
9 conforms to regulatory requirements and has an identified funding source to pay the Purchase  
10 Price; and

11           WHEREAS, On June 11, 2013, by Resolution No. 201-13, the Board of Supervisors  
12 endorsed a Term Sheet between the Port and Forest City Development California, Inc.  
13 ("Forest City") for the mixed-use development of the Pier 70 Waterfront Site, bordered  
14 generally by 20<sup>th</sup> Street, Michigan Street, 22<sup>nd</sup> Street, and the San Francisco Bay which  
15 contemplated including rezoning of the Option Property in the planned Special Use District for  
16 the Pier 70 Waterfront Site; and

17           WHEREAS, PG&E has granted its permission to the City and Forest City to rezone the  
18 Option Property by its letter dated June 6, 2014, a copy of which is on file with the Clerk of the  
19 Board of Supervisors in File No. 140750; and

20           WHEREAS, Resolution No. 54-14 indicates that net proceeds from the sale of the  
21 Option to a third-party will be dedicated to the rebuild of the Potrero Terrace and Annex HOPE  
22 VI rebuild project, subject to appropriation by the Board of Supervisors; now, therefore, be it

23           RESOLVED, That Board of Supervisors authorizes and directs the Director of Real  
24 Estate to execute the Option Agreement in substantially the form on file with the Clerk of the  
25 Board of Supervisors in File No. 140750, and in such final form as is approved by the Director

1 of Real Estate in consultation with the City Attorney, and, consistent with Resolution No. 54-  
2 14, urges the Director of Real Estate to seek Board of Supervisors authorization to: 1) conduct  
3 a competitive sale of the Option to a third party or to close the purchase of the Option  
4 Property on behalf of a City department; and 2) to issue a report to the Board of Supervisors  
5 that specifies the purchase price and measures to address site contamination within 30 days  
6 after closing the sale of the Option to a third party or the purchase of the Option Property on  
7 behalf of a City department; and, be it further

8         RESOLVED, That the Board of Supervisors authorizes the Director of Real Estate to  
9 enter into other agreements, including easement agreements, necessary to facilitate the  
10 Option, and to enter into any additions, amendments or other modifications to the Option,  
11 including preparation and attachment of, or changes to, any or all of the attachments and  
12 exhibits that the Director of Real Estate, in consultation with the City Attorney, determines are  
13 in the best interests of the City, do not materially decrease the benefits or otherwise materially  
14 increase the obligations or liabilities of the City, and are necessary or advisable to enable the  
15 parties to effectuate the Option and the purpose and intent of this resolution, such  
16 determination to be conclusively evidenced by the execution and delivery by the Director of  
17 Real Estate of such other agreements, easement agreements and/or additions, amendments  
18 or other modifications to the Option; and, be it further

19         RESOLVED, That within 30 days of the Option being fully executed by all parties the  
20 Director of Real Estate shall provide the Option to the Clerk of the Board for inclusion in the  
21 official file.  
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23  
24  
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**Items 4 and 5**  
**Files 14-0749 and 14-0750**

**Department:**  
 Public Utilities Commission (PUC)

### EXECUTIVE SUMMARY

#### Legislative Objectives

**File 14-0749** is a proposed resolution approving a license agreement between the Port and PG&E for approximately (a) 435,600 square feet of submerged land between Pier 28 ½ and the foot of 23<sup>rd</sup> Street, (b) 52,272 square feet of underground access for horizontal directional drilling, and (c) 21,120 square feet of land along 23<sup>rd</sup> Street. The license is for 40 years with one 26-year option to extend, totaling 66 years.

**File 14-0750** is a proposed resolution approving an option agreement for the City to purchase from PG&E the Hoedown Yard at Illinois and 22<sup>nd</sup> Streets for a purchase price of \$8,283,726.

#### Key Points

- Pacific Gas and Electric (PG&E) has two existing 230 kV cables that transmit electricity from the Embarcadero Substation to the Martin Substation, serving most of downtown San Francisco, including sections of the Embarcadero, Chinatown, North Beach, Financial District, Union Square, Mid-Market, South of Market, and Mission Bay. Loss of these two cables or failure of the Embarcadero Substation breaker will result in the loss of electricity to the areas served by the Embarcadero Substation.
- PG&E requests to enter into a license with the Port to construct the proposed Embarcadero-Potrero 230 kV Cable Project (Cable Project) on Port property.
- City staff has negotiated a transferable option to acquire the PG&E Hoedown Yard. The City will only exercise the purchase option with PG&E if (1) the option is transferred to a third party that agrees to pay the full purchase price and assume all environmental liabilities on the property or (2) a City department proposes a public use for the property and has identified a funding source to pay the purchase price.

#### Fiscal Impact

- Under the proposed license agreement, PG&E would pay the Port \$15,275,205 for the initial 40-year term of the license agreement.
- Under the proposed option agreement, the Real Estate Division would have the option to purchase the Hoedown yard for an estimated price of \$8,322,942. Documents provided by Port staff estimate that increased value of the property due to entitlement changes could exceed \$20,000,000.

#### Recommendation

Approve the proposed resolutions based on prior policy decisions made by the Board of Supervisors.

## MANDATE STATEMENT

Charter Section 9.118 (c) states that any lease of real property for a period of ten or more years, including options to renew, or having anticipated revenue to the City and County of \$1 million or more, shall first be approved by resolution of the Board of Supervisors.

Administrative Code Section 23.1 states that each department, board of commission of the City shall conduct all negotiations through the Director of Real Estate for the acquisition, conveyance or lease of any real property required for use or owned by the City. The Director of Real Estate must recommend resolutions and ordinances involving these transactions for approval by the Board of Supervisors.

## BACKGROUND

### Embarcadero-Potrero 230 kV Transmission Project

Pacific Gas and Electric (PG&E) has two existing 230 kV cables that comprise an electricity transmission line extending from the Embarcadero Substation (Fremont and Folsom Streets) to the Martin Substation (Schwerin Street and Geneva Avenue in Daly City,). Electricity generated by the Embarcadero Substation serves most of downtown San Francisco, including sections of the Embarcadero, Chinatown, North Beach, Financial District, Union Square, Mid-Market, South of Market, and Mission Bay.

According to the 2011/2012 Independent System Operator (ISO) Transmission Plan, loss of these two cables or failure of the Embarcadero Substation breaker will result in the loss of electricity to the areas served by the Embarcadero Substation, and "while the likelihood of the simultaneous loss of both circuits is low, the consequences of the outage are severe..." PG&E plans to construct a 230KV transmission bus<sup>1</sup> at the Embarcadero Substation, with an estimated completion date by 2016.

PG&E requests to enter into a license agreement with the Port to construct the proposed Embarcadero-Potrero 230 kV Transmission Project (Transmission Project) on Port property during the same general time frame in which PG&E is constructing the new Embarcadero 230KV Bus Upgrade project.

### The Hoedown Yard Option

As a condition of the license agreement, City staff has negotiated a transferable option to acquire the PG&E Hoedown Yard, which consists of two parcels located at Illinois and 22<sup>nd</sup> Streets adjacent to Pier 70. The site comprises of 130,720 square feet. Current uses at the Hoedown Yard include parking, equipment storage, stock piling and temporary storage of drilling mud, concrete, soil, sand, gravel and asphalt associated with PG&E utility projects. According to Mr. Brad Benson, Director of Special Projects of the Port of San Francisco, relocation of these PG&E functions from the Hoedown Yard will enhance the Port's efforts to develop Pier 70.

<sup>1</sup> Transmission buses are steel structure arrays of switches used to route power into a substation.

The Hoedown Yard contains known contamination. PG&E has completed site investigation and a human health risk assessment. The findings of this assessment indicate that arsenic is present in soil with an approximately 20,000 square foot (by approx. 5 feet deep) area in the northwest corner of the site at concentrations that pose a potential human health risk to future construction workers upon disturbance of the soil (not to current or future commercial/industrial workers).

Based on preliminary analysis provided by Mr. Benson, the Port estimates that the difference between the as-is purchase price of the Hoedown Yard and its future rezoned value for residential use could be higher than \$20,000,000. The range of possible future uses will be determined by the Planning Commission and the Board of Supervisors.

#### Recent Action by the Board of Supervisors

On February 25, 2014, the Board of Supervisors approved Resolution No. 54-14 endorsing the term sheet between the Port and the Real Estate Division and PG&E for the Embarcadero-Potrero 230 kV Transmission Project license agreement and the Hoedown Yard purchase option.

### **DETAILS OF PROPOSED LEGISLATION**

**File 14-0749** is a resolution approving a license agreement between the Port and PG&E for approximately (a) 435,600 square feet of submerged land between Pier 28 ½ and the foot of 23<sup>rd</sup> Street, (b) 52,272 square feet of underground access for horizontal directional drilling, and (c) 21,120 square feet of land along 23<sup>rd</sup> Street where PG&E will construct the Embarcadero-Potrero 230 kV Transmission Project. The license is for 40 years with one 26-year option to extend, totaling 66 years.

**File 14-0750** is a resolution approving an option agreement for the City to purchase from PG&E the Hoedown Yard at Illinois and 22<sup>nd</sup> Streets for a purchase price of \$8,283,726.

#### File 14-0749: ZA-1 Embarcadero-Potrero 230kV Transmission Project

Under the proposed resolution, the Port would enter into a license agreement with PG&E, in which PG&E would construct an underground/underwater cable extending from the Embarcadero Substation (Fremont and Folsom Streets) to the Potrero Switchyard at 23<sup>rd</sup> and Illinois Streets, as part of the Embarcadero-Potrero 230 kV T Project. The terms of the proposed license agreement are shown in Table 1 below.

**Table 1: Summary of Key Agreement Terms of Proposed License Agreement Between the Port and PG&E**

<b>Port Property to be used by PG&amp;E</b>	79,200 square feet of exclusive use underwater land <u>356,400</u> square feet of non-exclusive use underwater land 435,600 square feet of underwater land 52,272 square feet horizontal downward drilling <u>21,120</u> square feet underground 23 <sup>rd</sup> Street 508,992 square feet total
<b>Initial Term</b>	40 years from approximately 2014 through 2054
<b>Option to Renew</b>	26 years from approximately 2055 through 2081
<b>Rent Initial Term Payable by PG&amp;E to the Port</b>	\$15,275,205 pre-paid in two equal installments
<b>Rent Option Term Payable by PG&amp;E to the Port</b>	Fair market value based on third party appraisal Rent may be prepaid or paid annually as determined by PG&E. Prepaid option term rent will be equal to present value as of extension term commencement date, discounted at 6.5%. If annual payments are chosen, the option term rent will be equal to 103 percent of the initial term rent.
<b>Construction Period Rent</b>	75% abatement of rent during first two years of the license term
<b>Deposits Payable by PG&amp;E to the Port</b>	Security deposit equal to 1/6 <sup>th</sup> of the license fee in the 40 <sup>th</sup> year of the term (approximately \$385,000) Environmental oversight deposit of \$10,000, increased by 15% every five years Environmental assurances deposit up to \$6 million at the discretion of the Port
<b>Regulatory Approvals</b>	California Public Utilities Commission (CPUC) California Environmental Quality Act (CEQA) San Francisco Department of Public Works (DPW) permits Port building and other permits. Other State agencies, which may include State Water Resources Control Board, San Francisco Bay Conservation and Development Commission, and Regional Water Quality Control Board Army Corps of Engineers
<b>Non-exclusive License</b>	Port reserves the right to grant other licenses or easements except in PG&E's exclusive use zone or other Port areas described in the proposed term sheet

Source: Proposed license between the Port and PG&E

The terms of the proposed license are consistent with the term sheet previously approved by the Board of Supervisors.

*As-Is Condition*

According to the proposed license, PG&E acknowledges that the Port has made no representation or warranties concerning the license area. PG&E further acknowledges the presence of certain hazardous materials and accepts these areas as is and with all faults.

*Southern Waterfront Community Benefits and Beautification Policy*

Consistent with the revised term sheet approved by the Board of Supervisors on February 25, 2014, PG&E agrees to enclose or screen, at the City's option, a substantial portion of the existing Potrero Switchyard, located at 22<sup>nd</sup> Street @ Illinois Street, at any time within five years of designation of the City's preferred design. Screening of the switchyard may include either an enclosed building or perimeter screening, based on City preference and approval of the Port's Waterfront Design Advisory Committee. PG&E also agrees to conduct outreach to various community groups and stakeholders in the vicinity of the Project to educate the public with respect to the Project and to provide information the Board of Supervisors and other regulatory agencies about the Project.

File 14-0750: Option to Purchase the Hoedown Yard by the City from PG&E

Under the proposed resolution, the Board of Supervisors would authorize the Director of Real Estate to enter into an option agreement to purchase the Hoedown Yard from PG&E. The terms of the purchase option are summarized in Table 2 below.

The proposed option agreement sets out the terms of the future purchase and sale agreement between the City and PG&E. Once the Board of Supervisors approves option agreement, the Director of Real Estate may enter into a purchase and sale agreement, but requires approval to do so from Board of Supervisors and Mayor.

As the Director of Real Estate is required to submit a future purchase and sale agreement for the property to the Board of Supervisors and Mayor for approval, the proposed resolution urges the Director of Real Estate to seek Board of Supervisors and Mayoral approval prior to selling the purchase option to a third party or purchasing the property on behalf of a City department.

**Table 2: Summary of Key Agreement Terms for the City to Purchase the Hoedown Yard from PG&E**

<b>Area</b>	3.0 acres on the northeast corner of 22 <sup>nd</sup> Street and Illinois Street
<b>Purchase Price Payable by the City to PG&amp;E</b>	\$8,283,726, equal to \$63.37 per square foot for approximately 130,720 square feet (approximately 3.0 acres)
<b>Option Period</b>	Between January 1, 2018 and June 30, 2021
<b>Transfer Rights</b>	The option may be transferred or assigned to another party in the City's sole discretion without payment of fees or other consideration to PG&E.
<b>Closing Costs</b>	PG&E pays (a) the premium for title insurance; (b) all transfer and sales taxes; (c) one-half of escrow fees; and (d) PG&E's attorney and consultant fees  City pays (a) one-half of escrow fees; (b) all other title costs; and (c) City's attorney and consultant fees
<b>Closing Requirements</b>	Real Estate Division must complete acquisition of the property within five years of exercising the option and the latter of CPUC, CEQA and other regulatory approvals
<b>Rezoning of Property</b>	The City may rezone the property, which is currently zoned for heavy industrial use, to another use, including residential use. Rezoning to residential use will require the City and PG&E to determine allocation of the risks associated with residential development on the Hoedown Yard based on the existing site conditions.  The purchase price is not subject to change based on rezoning of the property.
<b>Refinement of Terms</b>	The terms and conditions of the option to purchase the property will be further refined in a separate option agreement, which will be submitted to the Board of Supervisors for approval concurrently with the License.

**Table 2 (continued)**

<p><b>Environmental Provisions</b></p>	<ul style="list-style-type: none"> <li>• Certain uses on the Hoedown Yard will be prohibited, including school, daycare and hospital uses and ground floor private open space;</li> <li>• High density residential, office and public open space will be permitted, subject to a modification to the Water Board’s deed restriction;</li> <li>• The ultimate buyer of the Hoedown Yard will clean up the arsenic in the northwest corner of the site and indemnify and hold harmless PG&amp;E from liability, including liability for personal injury, property damage, or further cleanup, during and after the construction of any new uses on the Hoedown Yard;</li> <li>• The owner of the Hoedown Yard or its agent will supply a \$1 million letter of credit to PG&amp;E to back its indemnity until 3 years after Certificate of Occupancy;</li> <li>• Construction on site will comply with a risk management plan and defined institutional controls, such as use of 3’ feet of clean soil and a demarcation layer above native soil in softscaped areas such as public open space; and</li> <li>• The property owner/operator will notify all residents of site conditions and tenants and contractors of site conditions and required institutional controls and require notification of subtenants and subcontractors.</li> </ul>
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*Transferable Option to Purchase the Hoedown Yard*

According to the proposed resolution, the City will only exercise the purchase option and enter into a sales and purchase agreement with PG&E if:

- The option is transferred to a third party that agrees to pay the full purchase price and assumes all environmental liabilities and other obligations related to the property; or
- A City department proposes a public use for the property and has identified a funding source to pay the purchase price.

**FISCAL IMPACT**

**Rent to the Port under the Proposed License**

Under the proposed license to be issued by the Port to PG&E, PG&E will prepay rent to the Port for the initial 40-year term, estimated to be \$15,275,205. The Port calculated the prepayment of the rent based on 3 percent per year escalation of the rent and an annual discount rate of 6.5 percent.<sup>2</sup> The discount rate of 6.5 percent is based on the current estimated blended average of the Port’s costs of funds (bonds, loans and other payables). The terms of the rent

<sup>2</sup> The discount rate is the rate used to calculate the present value of future payments.

under the proposed license are the same as in the term sheet previously approved by the Board of Supervisors.

#### **Costs to Purchase the Hoedown Yard**

Under the proposed agreement, the Real Estate Division would have the option to purchase the Hoedown Yard for \$63.67 per square foot, for a total estimated cost of \$8,322,942. The actual purchase price would be established based on the actual square footage of the Hoedown Yard, estimated to be 130,720 square feet. The purchase price is not subject to change due to rezoning of the property or the date when the title is transferred to the City.

According to Mr. John Updike, Director of Real Estate, the value of the Hoedown Yard would increase due to entitlement work that would change the relevant zoning codes to allow residential use on the site. A third-party developer would be sought to build out the property at a price higher than the \$8,322,942 used by the City to acquire by the property. If creating new entitlements to the property does not generate increased value or a third-party developer is not found, the City may decline the option to purchase the property.

Under the proposed agreement, Real Estate Division must exercise the option to purchase the Hoedown Yard by June 30, 2021, which is approximately seven years. Upon exercising the option, the City may complete the acquisition within seven years following the later of California Public Utilities Commission, California Environmental Quality Act and other regulatory approvals.

#### **RECOMMENDATION**

Approve the proposed resolutions based on prior policy decisions made by the Board of Supervisors.





140749  
140750

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
JUN 30 AM 11:57

June 27, 2014

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Subject: License Agreement – License between the Port of San Francisco and Pacific, Gas and Electric Company for Port of San Francisco License 15762

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for Board of Supervisors approving License 15762 between the Port Commission and Pacific, Gas and Electric Company for the ZA-1 Embarcadero-Potrero 230kV Transmission Project for approximately (i) 435,600 square feet of submerged land between Pier 28½ and the foot of 23rd Street, (ii) 52,272 square feet of underground access for horizontal directional drilling and (iii) 21,120 square feet of land along 23<sup>rd</sup> Street for a 40 year term, with a 26 year option.

Attached you will also find a cover letter from John Updike and a companion resolution authorizing a transferable option agreement with Pacific, Gas and Electric Company ("PG&E") to purchase the Hoedown Yard, two parcels located at Illinois and 22<sup>nd</sup> Streets comprising 130,720 square feet (or approximately 3 acres), for \$63.37 per square foot, or approximately \$8,283,726 (the "Option").

Attached you will also find the following supporting documents:

1. Four copies of the Port Commission Staff Report;
2. Four copies of the License 15762, subject to Board of Supervisors approval; and
3. Four copies of the Option.

You may contact me at 819-1759 about either the License or the Option, and you may also contact John Updike at 554-9850 about the Option.

Sincerely,

Brad Benson, Director of Special Projects  
Port of San Francisco





Edwin M. Lee, Mayor  
Naomi M. Kelly, City Administrator



John Updike  
Director of Real Estate

June 27, 2014

Through Naomi Kelly,  
City Administrator

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Transferable Option Agreement to Purchase the Hoedown Yard

Dear Board Members:

Attached for your consideration is a Resolution authorizing a transferable option agreement with Pacific, Gas and Electric Company ("PG&E") to purchase the Hoedown Yard, two parcels located at Illinois and 22<sup>nd</sup> Streets comprising 130,720 square feet (or approximately 3 acres), for \$63.37 per square foot (or approximately \$8,315,302).

On June 10, 2014, by Resolution 14-43, the San Francisco Port Commission approved License 15762 with PG&E for the ZA-1 Embarcadero-Potrero 230kV Transmission Project for approximately (i) 435,600 square feet of submerged land between Pier 28½ and the foot of 23rd Street, (ii) 52,272 square feet of underground access for horizontal directional drilling and (iii) 21,120 square feet of land along 23<sup>rd</sup> Street for a 40 year term, with a 26 year option (the "ZA-1 License"), subject to approval by the Board of Supervisors.

As a condition of the license, City staff has negotiated a transferable option to acquire the PG&E Hoedown Yard, which includes a portion of Irish Hill ("Option"), adjoining Pier 70. The Port of San Francisco is not a party to the Hoedown Yard Option Agreement and the agreement and its companion form of purchase and sale agreement ("Purchase and Sale Agreement") are not subject to Port Commission approval. However, given the proximity of the Hoedown Yard to Pier 70, Port staff participated in the discussions between the parties.

Current uses at the Hoedown Yard include parking, equipment storage, stockpiling and temporary storage of drilling mud, concrete, soil, sand, gravel and asphalt associated with PG&E utility projects. Relocation of these functions from the Hoedown Yard will enhance the Port's efforts to revitalize Pier 70.

The City option, to purchase the Hoedown Yard is transferable, allowing the City to transfer this purchase right to a private entity. Since the Hoedown Yard is an asset of a regulated utility, PG&E's sale of the Hoedown Yard may be subject to CPUC approval pursuant to Section 851 of the California Public Utilities Code, unless PG&E is able to relocate these activities before the City exercises the Option.

The Option includes the following exhibits negotiated by City staff and PG&E:

- Exhibit A: Legal Description
- Exhibit B: Form of Memorandum of Option Agreement
- Exhibit C: Form of Purchase and Sale Agreement, including a Form of Release and Indemnity Agreement
- Exhibit D: Approved Site Management Plan dated June 22, 2012
- Exhibit E: Covenant and Environmental Restriction on Property
- Exhibit F: Form of Assignment and Assumption Agreement
- Exhibit G: Environmental Risk Management Measures

Not unlike the surrounding Pier 70 area, the Hoedown Yard contains known contamination. PG&E has completed site investigation and a human health risk assessment. The findings of this assessment indicate that arsenic is present in soil within an approximately 20,000 sf (by approx. 5 ft. deep) area in the northwest corner of the site at concentrations that pose a potential human health risk to future construction workers upon disturbance of the soil (not to current or future commercial/industrial workers). All other contaminants investigated exist at concentrations below levels of concern. Unless the City chooses to exercise the Option for its own municipal use, the City does not, and will not, bear any responsibility for existing contamination or the environmental risk exposure of future uses on the site.

The San Francisco Bay Regional Water Quality Control Board ("Water Board") has approved PG&E's investigations and agrees that no remediation is warranted under current or anticipated future conditions, provided that activities at the site comply with an approved Site Management Plan ("SMP") and land use is restricted to commercial/industrial uses through a deed restriction recorded by the Water Board.

PG&E has developed and Water Board has approved a SMP for the Hoedown Yard. The SMP specifies measures to protect workers, minimize dust, prevent contamination of stormwater, and other measures to manage potential risks from soil contamination.

Port environmental staff also has reviewed the SMP and the Water Board deed restriction and believe that Hoedown Yard site conditions are suitable for future commercial or industrial use. If a third-party developer desires to acquire the City's option for the site for residential purposes, further remedial actions (such as removal or capping of arsenic-contaminated soil) would likely be required, along with approval of the Water Board to lift the deed restriction.

Pursuant to the Port's Waterfront Site Term Sheet with Forest City, Forest City will include the Hoedown Yard in the proposed Special Use District ("SUD") for the Waterfront Site for purposes of rezoning and design for development controls. The SUD is expected to be ready for consideration by the Planning Commission and the Board of Supervisors by mid-2016, after environmental review of the Waterfront Site mixed use development is complete, which means that the Hoedown Yard would be rezoned and ready for sale to a third-party within that timeframe, subject to required regulatory

approvals. PG&E has authorized the City and Forest City to pursue this rezoning, subject to the rezoning becoming effective after the close of a sale pursuant to the Option and the attached Form of Purchase and Sale Agreement.

Based on preliminary analysis – subject to change depending on market factors and site specific development risks – Port staff estimates that the difference between the as-is purchase price of the Hoedown Yard and its future rezoned value for residential use could be in excess of \$20 million. The City will continue to examine the highest and best use of the Hoedown Yard during development of the Waterfront Site SUD and associated environmental review. The range of permissible future uses of the Hoedown Yard will ultimately be decided by the Planning Commission and the Board of Supervisors.

Consistent with the requirements of Board of Supervisors Resolution No. 54-14, endorsing the Term Sheet for the ZA-1 Project, the Director of Real Estate will conduct a competitive process to sell the Option unless the Board has an approved acquisition on behalf of a City department that has identified funds to acquire the Hoedown Yard for a public use. If the Option is transferred to a third party, the purchaser will be required to pay market value and indemnify the City against environmental liabilities, and the City will not be in the chain of title for the site. The City intends to designate any net proceeds of its sale price to a third-party developer based on its rezoned value as a source of funds for the Potrero Terrace and Annex HOPE VI project, a major priority of Mayor Edwin Lee. For more information about this project, see <http://www.rebuildpotrero.com/>.

<b>Term</b>	<b>Description</b>
Premises	PG&E parcels Block 4110 (Lot 008A) and Block 4120 (Lot 002), 130,600 sf of industrial land at Illinois and 22 <sup>nd</sup> Street
Purchase Price	\$8,315,302 (\$63.37 per square foot)
Term	City or its transferee may exercise the Option by delivering written notice to PG&E on or before June 30, 2021
Section 851 Order	PG&E to use commercially reasonable efforts to relocate its operations by June 30, 2017 or, if unsuccessful, by December 31, 2020. Unless PG&E relocates its current Hoedown Yard operations in advance of the City's exercise of the Option, the CPUC will need to approve a Section 851 Order to allow PG&E to sell the property
Environmental Provisions	<ul style="list-style-type: none"> <li>• Certain uses on the Hoedown Yard will be prohibited, including school, daycare and hospital uses and ground floor private open space;</li> <li>• High density residential, office and public open space will be permitted, subject to a modification to the Water Board's deed restriction;</li> <li>• The ultimate buyer of the Hoedown Yard will clean up the arsenic in the northwest corner of the site and indemnify and hold harmless PG&amp;E from liability, including liability for personal injury, property damage, or further cleanup, during and after the construction of any new uses on the Hoedown Yard;</li> <li>• The owner of the Hoedown Yard or its agent will supply a \$1 million letter of credit to PG&amp;E to back its indemnity until 3 years after Certificate of Occupancy;</li> </ul>

**Table 2: Hoedown Yard Option Agreement and Purchase and Sale Agreement**

Term	Description
	<ul style="list-style-type: none"><li>• Construction on site will comply with a risk management plan and defined institutional controls, such as use of 3' feet of clean soil and a demarcation layer above native soil in soft scaped areas such as public open space; and</li><li>• The property owner/operator will notify all residents of site conditions and tenants and contractors of site conditions and required institutional controls and require notification of subtenants and subcontractors.</li></ul>

We recommend approval of the proposed Option. If you have any questions regarding this matter, please contact me at 554-9860 or Brad Benson at the Port of San Francisco at 274-0498.

Respectfully,



John Updike  
Director of Real Estate

cc: Brad Benson, Port of San Francisco



**Pacific Gas and  
Electric Company**

June 6, 2014.

Mr. Brad Benson  
Port of San Francisco  
Pier 1, The Embarcadero  
San Francisco, CA 94111

RE: Hoe Down Yard

Dear Mr. Benson:

This letter authorizes the City and County of San Francisco ("City") and Forest City Development California, Inc. ("Forest City") to include the potential transfer and rezoning of the PG&E property identified as San Francisco County Lot and Block Nos. 4110-008A and 4120-002 (the "Hoedown Yard") in the Special Use District ("SUD") entitlement application and accompanying Environmental Impact Report ("EIR") for the proposed development of the Port of San Francisco's ("Port") Pier 70 Waterfront Site.

This authorization includes all steps in: (1) the City's entitlement application and environmental review process, including but not limited to the Preliminary Project Assessment and Environmental Evaluation, the SUD and EIR; and (2) the transactional documents and financing mechanisms that the City, the Port, and Forest City contemplate for the proposed development.

Section 23 of the Embarcadero-Potrero 230 KV Transmission Project Term Sheet endorsed by the Port Commission and pending Board of Supervisors approval states:

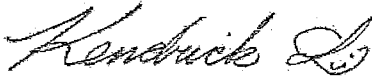
Prior to the transfer of title of the Hoedown Yard to the City, the City or another party approved by the City, may re-zone and entitle the Hoedown Yard for a different use or category, including for residential use. In connection with such efforts, PG&E shall reasonably cooperate with the City's efforts and expressly consents to lifting the restrictions on residential use at the Hoedown Yard, subject to the conditions herein. Such cooperation will include, without limitation, no later than thirty (30) days following City's written request, PG&E will deliver written notice to the City, and the Planning Department, authorizing City, another party approved by the City, and any developer of the Pier 70 waterfront site to pursue re-zoning the Hoedown Yard, provided such rezoning and or entitlement change (a) does not become effective unless and until the Hoedown Yard is actually acquired pursuant to the Option, and (b) does not impose any cost or condition on PG&E (other than PG&E consenting to and taking necessary actions to lift the restrictions on residential use at the Hoedown Yard).

Notwithstanding the foregoing, PG&E's agreement to lift the restrictions on residential use at the Hoedown Yard is subject to the parties establishing a mechanism reasonably agreeable to each party, to allocate risks associated with residential development on the Hoedown Yard based on the existing site conditions.

As discussed, the restriction on residential use of the Hoe Down Yard was placed by the North Coast Regional Water Quality Control Board and cannot be removed by PG&E. Any amendments to the restrictions shall be at no cost to PG&E. PG&E is committed to reaching mutually agreeable cleanup standards and mechanisms that once demonstrated to be implemented will cause PG&E not to interfere with future site residential development.

This letter is PG&E's consent for the City to proceed with entitlement efforts, at no cost to PG&E, for the Hoedown Yard. Such entitlement efforts are subject to: (1) Board of Supervisors approval of a License Agreement between PG&E and the City, acting through the Port Commission, for the Embarcadero-Potrero 230 KV Transmission Project; (2) completion of environmental review of the proposed development of the Pier 70 Waterfront Site; (3) Board of Supervisors approval of the City's acquisition of the Hoe-Down Yard; (4) PG&E and the City reaching agreement on cleanup standards and mechanisms to which future owners of the Hoedown Yard will be bound prior to its residential development; (5) any required California Public Utilities Commission authorization of the sale of the Hoedown Yard.

Sincerely,



Kendrick Li  
Supervisor, Land Acquisition Department



## MEMORANDUM

June 5, 2014

**TO:** MEMBERS, PORT COMMISSION  
Hon. Leslie Katz, President  
Hon. Willie Adams, Vice President  
Hon. Kimberly Brandon  
Hon. Mel Murphy  
Hon. Doreen Woo Ho

**FROM:** Monique Moyer  
Executive Director

**SUBJECT:** Request approval of License 15762 with Pacific, Gas and Electric Company for the ZA-1 Embarcadero-Potrero 230kV Transmission Project for approximately (i) 435,600 square feet of submerged land between Pier 28½ and the foot of 23rd Street, (ii) 52,272 square feet of underground access for horizontal directional drilling and (iii) 21,120 square feet of land along 23<sup>rd</sup> Street for a 40 year term, with a 26 year option, subject to approval by the Board of Supervisors

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

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**Note:** This staff report includes errata shown in underline that were added since the original Port Commission staff report.

### Introduction

On November 13, 2012, the Port Commission approved Resolution 12-90, endorsing the ZA-1 Embarcadero-Potrero 230kV Transmission Project Term Sheet ("Original Term Sheet") between the Port and Pacific, Gas and Electric Company (PG&E), all related to onshore and submerged Port land between Pier 28 ½ and the foot of 23rd Street and PG&E parcels Block 4110 (Lot 008A) and Block 4120 (Lot 002), commonly known as the "Hoedown Yard" (see Exhibits A and B).

On September 10, 2013, the Port Commission approved Resolution 13-34, endorsing a Revised Project Term Sheet ("Revised Term Sheet"), which incorporated revised business terms negotiated by the Parties, including a new requirement to screen or enclose the existing PG&E 115kV Switchyard located between 22<sup>nd</sup> Street and 23<sup>rd</sup> Street along Illinois Street.

THIS PRINT COVERS CALENDAR ITEM NO. 12B

On February 25, 2014, the Board of Supervisors approved Resolution 54-14, endorsing the Revised Term Sheet with a number of modifications recommended by the Board of Supervisors and its Budget Analyst, as further described in this report.

This report describes the terms of proposed License 15762 with PG&E for the ZA-1 Embarcadero-Potrero 230kV Transmission Project for approximately (i) 435,600 square feet of submerged land between Pier 28½ and the foot of 23rd Street, (ii) 52,272 square feet of underground access for horizontal directional drilling and (iii) 21,120 square feet of land along 23<sup>rd</sup> Street for a 40 year term, with a 26 year option (the "ZA-1 License"), and requests Port Commission approval of the attached resolution approving the ZA-1 License, subject to approval by the Board of Supervisors.

This report also includes a description of a proposed Option Agreement and companion Purchase and Sale Agreement for the Hoedown Yard (the "Hoedown Yard Option") between the Department of Real Estate and PG&E that is not subject to approval by the Port Commission but will be considered by the Board of Supervisors in tandem with the ZA-1 License.

## I. ZA-1 LICENSE

### Background

After examining two upland alternative routes through City neighborhoods, Pacific Gas & Electric ("PG&E") proposes to construct a new, single circuit, 230 kV transmission line between its Embarcadero Substation and its Potrero Substation to increase reliability of electric service to downtown San Francisco and provide operational flexibility along a route of submerged Port property ("ZA-1 Project"). Exhibit C to this staff report shows the service area of the existing Embarcadero Substation that will benefit from this reliability improvement. Exhibit A to this staff report (the "Premises") shows the proposed submarine route for the project along Port submerged land.

According to the California Public Utilities Commission ("CPUC"), PG&E submitted an application for the project to the CPUC on December 11, 2012 (Application # A.12-12-004<sup>1</sup>). On October 30, 2013 the CPUC published a Final Mitigated Negative Declaration<sup>2</sup>. The CPUC approved the project on January 16, 2014 (Decision # D.14-01-07<sup>3</sup>). Exhibit D to this staff report summarizes the CPUC decision findings related to

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<sup>1</sup> PG&E CPUC Application:

[http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:56:1249097859999101::NO:RP,57,RIR:P5,PROCEEDING\\_SELECT:A1212004](http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:56:1249097859999101::NO:RP,57,RIR:P5,PROCEEDING_SELECT:A1212004)

<sup>2</sup> CPUC Final Mitigated Negative Declaration:

<http://www.cpuc.ca.gov/Environment/info/aspen/embarc-potrero/toc-fmnd.htm>

<sup>3</sup> CPUC Decision:

<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=85875195>

the project. Exhibit E to this staff report includes the mitigation measures adopted by the CPUC for the project which are incorporated into the proposed Project. If the Port Commission adopts the attached resolution, these measures will be conditions of Port Commission approval of the License. The Port will receive copies of all mitigation monitoring reports to the CPUC.

The ZA-1 Project is subject to other required proprietary and regulatory approvals, including approval by the Federal Energy Regulatory Commission ("FERC") and the California Independent System Operator ("CAISO").

## **Project Description**

As described in the September 6, 2013 Port Commission staff report, the proposed Embarcadero-Potrero cable, or ZA-1 Project, would provide a third cable into Embarcadero Substation. Seismic risk is a key consideration in its design and routing. If approved, the ZA-1 Project will also connect PG&E's 230 kV system in San Francisco with both the Trans Bay Cable ("TBC")<sup>4</sup> and PG&E's existing 115 kV systems in San Francisco, providing operational flexibility to both the 230 kV and 115kV systems. Both PG&E and City staff consider the Embarcadero-Potrero 230 kV Transmission Project a high priority because of the impact that outages would have on downtown San Francisco.

The project will involve both transmission line work and substation work. Three major elements are:

1. Construct an approximately 3.5 mile, 230 kV submarine cable between the Embarcadero Substation and the Potrero Switchyard;
2. Terminate the new cable into a 230 kV bus (to be upgraded as part of a separate reliability project that PG&E is undertaking) at the Embarcadero Substation; and
3. Construct a new 230 kV switchyard adjacent to the Potrero Switchyard, terminate the new cable there, and interconnect the new 230 kV and existing 115 kV switchyards at Potrero Substation via two new 230/115 kV transformers.

The submarine cable route will run in a reinforced underground duct bank the length of 2 city blocks along the TBC alignment as it exits the Potrero Switchyard and enters the Bay. It will then continue in the Bay along the general alignment and several hundred feet to the west of the TBC, and then return to land 2-3 city blocks from the Embarcadero Substation, where it will be installed in a reinforced underground duct bank to the substation. Both landings from the Bay to land will be accomplished through horizontal directional drilling (see Exhibit A).

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<sup>4</sup> On August 7, 2007, by Resolution 414-07, the San Francisco Board of Supervisors approved licenses totaling 39 years (including options) for the construction and operation of the Trans Bay Cable on Port submerged land. The Trans Bay Cable project is a 53 mile high-voltage direct current (HVDC Plus) underwater cable interconnection between San Francisco and Pittsburg that transmits up to 400 MW of power.

Port Engineering and Maritime Division staff have reviewed the proposed route and determined that 1) the PG&E plan to install the cable beneath bedrock (adjacent to Piers 30-32 will not hinder maritime operations along side the pier or future dredging of the area (if needed), and 2) the submarine portion of the route is at a sufficient depth so as not to interfere with future maritime operations.

### **Seismic Risk and Power Service to Downtown San Francisco**

According to the CPUC, the ZA-1 Project will provide significant protection to San Francisco in the aftermath of a major earthquake:

“Both [existing] cables [serving downtown San Francisco] are located in areas of San Francisco expected to be subject to significant liquefaction in the event of a major earthquake. PG&E retained InfraTerra, Inc., a specialist in seismic response of infrastructure systems, and an independent technical review panel consisting of Dr. Thomas O’Rourke of Cornell University and Dr. Steve Kramer of the University of Washington, both recognized experts in seismic response, to evaluate the seismic risk to the two cables. The study shows that there is a 91.1 percent probability of concurrent failure of the two cables in the event of a magnitude 7.8 earthquake on the San Andreas Fault, and a 48.2 percent probability of concurrent failure in the event of a magnitude 7.0 earthquake on the Hayward fault. It further shows that the overall 30-year and 50-year probabilities for concurrent failure are 26 percent and 39.4 percent, respectively.

“Physical damage to each could take two to four months to fix and would have severe economic impacts on downtown San Francisco. PG&E retained Dr. Michael Sullivan of Freeman, Sullivan & Co., an expert in electrical outage costs, to analyze the expected economic costs to businesses of long duration outages in downtown San Francisco. Direct costs to local businesses would range from \$125.7 million in the event of a 24-hour outage to nearly \$3 billion in the event of a seven-week outage. Indirect costs experienced by businesses in California as a whole would range from \$62.9 million to \$251.4 million in the event of a 24-hour outage to \$1.461 billion to \$5.845 billion in the event of a seven-week outage. In addition, many residents, particularly those that live in high-rise buildings that rely on mechanical ventilation and elevators, would have to evacuate their homes and find other places to live during the outage; governmental agencies would incur significant additional costs to provide security, traffic control and emergency services during an outage; and an extended outage would cause many businesses to fail and jobs to be lost.

“The third cable provided by the [ZA-1] project is designed to withstand a 7.8 magnitude earthquake on the San Andreas Fault.”

### **Prior Staff and Board of Supervisors Budget Analyst Analysis**

Port staff and the Board of Supervisors Budget Analyst have drafted three prior reports on the proposed ZA-1 Project, available at the following web addresses:

<b>Report</b>	<b>Web Address</b>
November 8, 2012 Staff Report on the Original ZA-1 Term Sheet	Report: <a href="http://www.sfport.com/modules/showdocument.aspx?documentid=4928">http://www.sfport.com/modules/showdocument.aspx?documentid=4928</a>
September 6, 2013 Staff Report on the Revised ZA-1 Term Sheet	Report: <a href="http://www.sfport.com/modules/showdocument.aspx?documentid=6674">http://www.sfport.com/modules/showdocument.aspx?documentid=6674</a> Exhibits: <a href="http://www.sfport.com/modules/showdocument.aspx?documentid=6675">http://www.sfport.com/modules/showdocument.aspx?documentid=6675</a>

## Board of Supervisors Amendments

The terms endorsed by the Port Commission in the Revised Term Sheet were amended as follows during Board of Supervisors consideration of the Revised Term Sheet, subject to approval by the Port Commission (where applicable):

- The responsibility for the City's transferable option to acquire the Hoedown Yard for resale to generate proceeds for the Potrero Terrace and Annex HOPE VI Project was shifted from the Office of Economic and Workforce Development to the Real Estate Division of the General Services Agency;
- The Board of Supervisors must approve of the acquisition of the Hoedown Yard by a City department or authorize the sale of the option to acquire the Hoedown Yard to a third party developer;
- The Real Estate Division must conduct a competitive process to dispose of the Hoedown Yard to a third party developer;
- In the event of a sale of the Hoedown Yard to a third party developer, the City may not have any liability exposure in connection with that sale or subsequent uses of the property; and
- The proposal to use Infrastructure Financing District proceeds from the future development of the Hoedown Yard, subject to future approval by the Board of Supervisors, to finance the screening or enclosure of the PG&E Potrero 115 kV Switchyard in the event that electricity rate funding is not available for this purpose was eliminated.

Port staff and PG&E have negotiated the final proposed agreements consistent with this policy direction.

## Proposed Terms

The parties agreed to a prepaid rent structure based on two appraisals of nearby upland industrial land and a formula to adjust for submerged land and a combination of exclusive and compatible use zones more fully described in Exhibit F. The prepaid rent for the initial forty (40) year term of the agreement utilizes a 6.5% discount rate, which is the estimated blended average of the Port's costs of funds. The prepaid rent will be paid by PG&E over two installments: 1) \$7,637,602.68 on the License effective date, and 2) \$7,637,602.68 before the later of (a) the CPUC's issuance of a Full Notice to Proceed and (b) January 1, 2015.

The following are the other terms for the proposed non-exclusive license, a copy of which is on file with the Port Commission Secretary:

<b>Table 1: License 15762 Terms</b>	
<b>Term</b>	<b>Description</b>
License Area	<p>Approximately (i) 435,600 square feet of submerged land between Pier 28½ and the foot of 23rd Street, (ii) 52,272 square feet of underground access for horizontal directional drilling and (iii) 21,120 square feet of land along 23<sup>rd</sup> Street.</p> <p>The submerged area is divided into the Submarine Portion Exclusive Zone (1 foot width on either side of the centerline of each of three cables) and the Submarine Portion Compatible Use Zone (4.5 foot width extending beyond the Submarine Portion Exclusive Zone on each side of each cable).</p>
Term	40 years and one 26 year PG&E option to renew
Pre-Paid Rent	<p>Two equal installments: (1) the first to be paid no later than the Effective Date (payment of \$7,637,602.68); AND (2) the second to be paid on or before the later of (a) the CPUC's issuance of a Full Notice to Proceed and (b) January 1, 2015 (payment of \$7,637,602.67).</p> <p>The pre-paid rent is calculated based on the appraisals and methodology described in Exhibit F.</p>
Option Period Rent (for 26 years after 1 <sup>st</sup> 40 years)	<p>Fair Market Value ("FMV") rent, paid either annually or prepaid (at PG&amp;E's option), with rent determined by appraisal. If rent is prepaid for the 26 year option period, the FMV rent will be determined by appraisal, using the same formulas used to establish the initial rent, including an 8% capitalization rate and a discount rate set at the average of the Port's future taxable and tax-exempt bond interest rates.</p> <p>The appraisal process to determine FMV rent includes a baseball arbitration appraisal process, with two initial appraisals and a 3<sup>rd</sup> appraisal to resolve the process, if needed.</p>
Permitted Uses	<p>(a) Constructing, operating and maintaining the Project, together with all necessary transmission line, fiber optic lines, ductwork, conduit, anchoring foundations and related equipment for use in connection therewith (collectively, the "ZA-1 Line Equipment"), including the right to excavate, repair, reconstruct, replace within the License Area, and remove such ZA-1 Line Equipment, for the purpose of transmission, transportation and/or distribution of electric energy and communications between Licensee's Embarcadero Substation and Potrero Substation in San Francisco; and (b) licensing the unused capacity of the ZA-1 Line with third parties, including any Affiliate of PG&amp;E. All Permitted Uses are subject to Port permitting where required.</p>
Security	<p>\$384,698.86 cash or letter of credit security deposit, refundable when PG&amp;E pays the second installment of the prepaid license fee, AND 1/6<sup>th</sup> of the Extension Term License Fee that would be due in the last (26th) year of the Extension Term (waived if PG&amp;E elects to pre-pay the option period license fee)</p>
Environmental Security	<p>\$10,000 cash Environmental Oversight Deposit for the recovery of Port's costs and expenses related to the increased inspection, monitoring, enforcement and administration of the License</p> <p>Environmental assurances deposit in the form of an irrevocable standby letter of credit equaling \$6,000,000:</p> <p>(i) \$5,000,000 used for Claims due to any requirement of a Regulatory</p>

**Table 1: License 15762 Terms**

Term	Description
	<p>Agency for Investigation/Remediation of Hazardous Materials arising from Licensee's or its Agents' discovery of preexisting contamination to be released 12 months after data is submitted to the Regional Water Quality Control Board subject to conditions set forth in the License AND</p> <p>(ii) \$1,000,000 for the full and faithful performance by Licensee of its obligations with respect to Hazardous Materials.</p>
<p>Limitations on Other Uses of License Area</p>	<p>Port shall obtain Licensee's reasonable, written consent to:</p> <p>(i) Permit uses that penetrate the Bay mud surface in the Submarine Portion Exclusive Zone.</p> <p>(ii) Permit a lateral crossing through the License Area. If lateral crossings are allowed, Port shall require that such crossings be no closer than five (5) vertical feet from the ZA-1 Line Equipment and be equipped with thermal and mechanical protection.</p> <p>(iii) In the Compatible Use Zone of the submarine portion, permit other underground or submarine electric lines.</p> <p>(iv) With respect to any Horizontal Directional Drilling Area:</p> <p>(1) <u>allow piles to be installed to the bedrock in the area north and east of Pier 30 to support maintenance and facilitate use and development of Piers 30/32; provided that to the extent that Licensee provides such consent, Licensee and Port will cooperate in good faith to identify installation specifications to adequately protect the ZA-1 Equipment;</u></p> <p>(2) <u>license, lease or otherwise permit in writing construction of solder piles, piers, pilings, foundations, or other permanent improvements in any other HDD Area.</u></p> <p>(v) Dredging:</p> <p>(1) Permit any dredging in the submarine portions of the License Area;</p> <p>(2) In the area north and east of Piers 30-32, Port may be permitted to dredge up to a depth of forty feet (40') below mean lower low water if Port reasonably determines dredging to such depth is required to support or advance maritime operations and use within Port jurisdiction, provided that in no event shall Port dredge within five (5) vertical feet of the ZA-1 Line Equipment.</p> <p>(vi) Port will cooperate with Licensee to have the License Area designated as a no anchoring area by the US Coast Guard.</p> <p>If Licensee denies consent, Port may seek CPUC approval to allow the activity or to allow the proposed facilities to be co-located in the License Area, which approval would supersede Licensee's denial.</p> <p>Licensee will ensure that the License Area is depicted on all official navigation maps as a "no anchoring" area.</p>
<p>Required Removal or Relocation of ZA-1 Line</p>	<p>Licensee agrees that it will remove or relocate without expense to Port or City any ZA-1 Line Equipment by any lawful change of grade, alignment or width of any street or right of way, or, if such removal or relocation is made necessary by any work to be performed under the governmental authority of Port or the City.</p> <p>Licensee and the Port/City will use commercially reasonable efforts to facilitate the design of any Port or City project requiring such removal or relocation to minimize time and expense to both Parties. The Parties will negotiate in good faith to amend this License to reflect the new License</p>

Table 1: License 15762 Terms	
Term	Description
	Area and any associated fees. If the ZA-1 Line cannot legally be moved or the Port or City can reasonably redesign or reroute a Port or City project at a lower cost than moving the ZA-1 Line, Port and Licensee will negotiate to allow the Port or City to proceed in an alternative manner acceptable to all Parties, conditioned on Licensee bearing the incremental costs of the City/Port alternative (where incremental means the difference between the Port's/City original conflicting design and the Port's/City alternative design).
Potrero Switchyard Screening	Within 10 years after executing the ZA-1 License, the City may designate its preference ("Preferred Screen") for 1) enclosing the Potrero Switchyard in a building, or 2) surrounding a significant portion of the Potrero Switchyard with a perimeter screen performed at PG&E's cost. PG&E will use commercially reasonable efforts to obtain rate reimbursement and other approvals required for these improvements.
Sales and Use Tax	City shall be entitled to receive applicable sales and use taxes ordinarily payable under Law. Licensee shall use its best commercially reasonable efforts to have the City and County of San Francisco realize sales and use taxes as to the Project in San Francisco, including all of its components.

### **Potrero Switchyard Screening**

As described in the September 6, 2013 Port Commission staff report, the screening or enclosure of the existing 115 kV Potrero Switchyard is critical to support planned growth at the Pier 70 and NRG<sup>5</sup> sites in the Central Waterfront, a Priority Development Area. The License requires PG&E to obtain the approvals for and construct screening (or otherwise enclose) the Potrero Switchyard as a public benefit of the ZA-1 Transmission Line.

Within 10 years after executing the ZA-1 license, the City may designate its Preferred Screen (either enclosing the Switchyard in a building or constructing a perimeter screen). Following this notice, PG&E will apply for any required rate-reimbursement, commence any required CEQA review and apply for any other required permits for the Preferred Screen. The conceptual design for the Preferred Screen will include architectural and aesthetic qualities consistent with PG&E's customary protocols for screening dense urban substation facilities, subject to review by the Port's Waterfront Design Advisory Committee. Subject to force majeure events, or its failure to obtain required approvals, PG&E shall complete construction of the approved Revised Screen Design no later than five (5) years after the City presents the notice of its Preferred Screen.

<sup>5</sup> The NRG site is a 23 acre parcel immediately to the south of Pier 70 which was the site of the former Potrero Power Plant which closed in January 2011.



The Revised Term Sheet previously contemplated that infrastructure financing district proceeds from future development of the Hoedown Yard, subject to Board of Supervisors approval, could be a source to partially fund the Preferred Screen, if rate funding was insufficient. The Board of Supervisors was not supportive of this concept, so it has not been included in the agreement.

### **Southern Waterfront Community Benefits**

City staff believes that the ZA-1 project provides critical transmission reliability benefits to the City. In addition, the City option to acquire the Hoedown Yard and the PG&E obligation to screen the Potrero Switchyard as described above are major public benefits of the proposed project which will benefit the Southern Waterfront community and increase the value of Port property.

The proposed License is subject to the Port's Southern Waterfront Community Benefits Policy. As such, Port staff will set aside 8% of project rents to the Southern Waterfront Community Benefit Fund ("Fund"), or \$1,222,016. The Fund is used to pay for open space and related public improvements in the Southern Waterfront. Expenditures from the fund are subject to Port Commission approval. As a condition of the License, PG&E has also agreed to construction of a sidewalk and related right of way improvements on 23rd Street adjacent to the Potrero Switchyard.

PG&E has negotiated a voluntary Local Hire agreement with the Office of Economic and Workforce Development which includes the following provisions:

- PG&E contractors will use their best efforts to utilize individuals from the CityBuild<sup>6</sup> program;
- PG&E Contractors will use good faith efforts to meet a San Francisco local hiring goal of 30% or more for project laborer positions;
- PG&E will work with Contractors to identify required certifications and training for employment of workers and assist in providing required training; and
- CityBuild will identify key staff as liaisons to the Project and as a referral agency to provide referrals of qualified economically disadvantaged individuals for employment on the Project.

### **Projected Ratepayer Impacts within CAISO Grid**

The cost of transmission lines constructed within the Control Area of CAISO is shared by electricity ratepayers in California. The CAISO Control Area generally includes

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<sup>6</sup> CityBuild is an employment program in the Office of Economic and Workforce Development ("OEWD"). CityBuild provides workforce training and job placement services to San Francisco residents in the construction industry.

PG&E Territory, Southern California Edison (SCE) Territory, San Diego Gas & Electric (SDG&E) Territory and other metered subsystems.

Based on a project cost of \$197 million, including contingency, PG&E projects that the Project will increase the average bundled retail electric bills by no more than a few cents per month. PG&E currently projects that the Project will generate approximately \$4.2 million in sales taxes to the City over the two year construction period.

### **Project Schedule**

PG&E is pursuing the following Project schedule:

- Building Construction and Equipment Installation: June 2014 – Feb. 2016
- Onshore Infrastructure Construction (including HDD): Aug. 2014 – Aug. 2015
- Offshore Cable Laying: June 2015 – Aug. 2015
- Cable in Service: April 2016

## II. Hoedown Yard Option

As a condition of the license, City staff has negotiated a transferable Real Estate Division option to acquire the PG&E Hoedown Yard, which includes a portion of Irish Hill ("Hoedown Yard Option Agreement"), adjoining Pier 70. The Port of San Francisco is not a party to the Hoedown Yard Option Agreement and the agreement and its companion form of purchase and sale agreement ("Purchase and Sale Agreement") are not subject to Port Commission approval. However, given the proximity of the Hoedown Yard to Pier 70, Port staff has participated in the discussions between the parties. A map of the Hoedown Yard is attached as Exhibit B.

While the Port will not own the Hoedown Yard Option Agreement, a description of current site conditions and the Option are included in this report in order to provide a complete record of the ZA-1 Project transaction between the City and PG&E.

Current uses at the Hoedown Yard include parking, equipment storage, stockpiling and temporary storage of drilling mud, concrete, soil, sand, gravel and asphalt associated with PG&E utility projects. Relocation of these functions from the Hoedown Yard will enhance the Port's efforts to revitalize Pier 70<sup>7</sup>. Exhibit G shows the proximity of the Hoedown Yard to Pier 70.

The City option to purchase the Hoedown Yard is transferable, allowing the City to transfer this purchase right to a private entity. Since the Hoedown Yard is an asset of a regulated utility, PG&E's sale of the Hoedown Yard is subject to CPUC approval pursuant to Section 851 of the California Public Utilities Code, unless PG&E is able to relocate these activities before the City exercises the option.

Not unlike the surrounding Pier 70 area, the Hoedown Yard contains known contamination. PG&E has completed site investigation and a human health risk assessment. The findings of this assessment indicate that arsenic is present in soil within an approximately 20,000 sf (by approx. 5 ft. deep) area in the northwest corner of the site at concentrations that pose a potential human health risk to future construction workers upon disturbance of the soil (not to current or future commercial/industrial workers). All other contaminants investigated exist at concentrations below levels of concern. The Port and City do not, and will not, bear any responsibility for existing contamination or the environmental risk exposure of future uses on the site.

The San Francisco Bay Regional Water Quality Control Board ("Water Board") has approved PG&E's investigations and agrees that no remediation is warranted under

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<sup>7</sup> On May 28, 2013, the Port Commission approved Resolution 13-20 endorsing a Term Sheet between the Port and Forest City Development California, Inc. ("Forest City") for the mixed-use development of the Pier 70 Waterfront Site, bordered generally by 20<sup>th</sup> Street, Michigan Street, 22<sup>nd</sup> Street, and the San Francisco Bay, shown in Exhibit G. The Term Sheet was subsequently endorsed by the Board of Supervisors on June 11, 2013. City staff, including Port staff, and Forest City continue to pursue entitlement of the Pier 70 Waterfront Site.

current or anticipated future conditions, provided that activities at the site comply with an approved Site Management Plan (“SMP”) and land use is restricted to commercial/industrial uses through a deed restriction recorded by the Water Board.

PG&E has developed and Water Board has approved a SMP for the Hoedown Yard. The SMP specifies measures to protect workers, minimize dust, prevent contamination of stormwater, and other measures to manage potential risks from soil contamination.

Port environmental staff also has reviewed the SMP and the Water Board deed restriction and believe that Hoedown Yard site conditions are suitable for future commercial or industrial use. If a third-party developer desires to acquire the City’s option for the site for residential purposes, further remedial actions (such as removal or capping of arsenic-contaminated soil) would likely be required, along with approval of the Water Board to lift the deed restriction.

Pursuant to the Port’s Waterfront Site Term Sheet with Forest City, Forest City will include the Hoedown Yard in the proposed Special Use District (“SUD”) for the Waterfront Site for purposes of rezoning and design for development controls. The SUD is expected to be ready for consideration by the Planning Commission and the Board of Supervisors by mid-2016, after environmental review of the Waterfront Site mixed use development is complete, which means that the Hoedown Yard would be rezoned and ready for sale to a third-party within that timeframe, subject to required regulatory approvals. PG&E has authorized the City and Forest City to pursue this rezoning. Port staff will continue to monitor the Real Estate Division’s activities with respect to the Hoedown Yard.

Based on preliminary analysis – subject to change depending on market factors and site specific development risks – Port staff estimates that the difference between the as-is purchase price of the Hoedown Yard and its future rezoned value for residential use could be in excess of \$20 million. The City will continue to examine the highest and best use of the Hoedown Yard during development of the Waterfront Site SUD and associated environmental review. The range of permissible future uses of the Hoedown Yard will ultimately be decided by the Planning Commission and the Board of Supervisors.

Subject to approval by the Board of Supervisors, the Director of Real Estate will conduct a competitive process to sell its option to purchase the Hoedown Yard. Unless the City opts to acquire the Hoedown Yard for its own use, City staff expects that the City will not be in the chain of title for the site. The City intends to designate any net proceeds of its sale price to a third-party developer based on its rezoned value as a source of funds for the Potrero Terrace and Annex HOPE VI project, a major priority of Mayor Edwin Lee. For more information about this project, see <http://www.rebuildpotrero.com/>.

<b>Table 2: Hoedown Yard Option Agreement and Purchase and Sale Agreement</b>	
<b>Term</b>	<b>Description</b>
Premises	PG&E parcels Block 4110 (Lot 008A) and Block 4120 (Lot 002), 130,600 sf of industrial land at Illinois and 22 <sup>nd</sup> Street (see Exhibit B)
Purchase Price	\$8,315,302 (\$63.37 per square foot)
Term	City or its transferee may exercise the Option by delivering written notice to PG&E on or before December 31, 2019
Section 851 Order	Unless PG&E relocates its current Hoedown Yard operations in advance of the City's exercise of the Option, the CPUC will need to approve a Section 851 Order to allow PG&E to sell the property
Environmental Provisions	<ul style="list-style-type: none"> <li>• Certain uses on the Hoedown Yard will be prohibited, including school, daycare and hospital uses and ground floor private open space;</li> <li>• High density residential, office and public open space will be permitted, subject to a modification to the Water Board's deed restriction;</li> <li>• The ultimate buyer of the Hoedown Yard will clean up the arsenic in the northwest corner of the site and indemnify and hold harmless PG&amp;E from liability, including liability for personal injury, property damage, or further cleanup, during and after the construction of any new uses on the Hoedown Yard;</li> <li>• The owner of the Hoedown Yard or its agent will supply a \$1 million letter of credit to PG&amp;E to back its indemnity until 3 years after Certificate of Occupancy;</li> <li>• Construction on site will comply with a risk management plan and defined institutional controls, such as use of 3' feet of clean soil and a demarcation layer above native soil in soft scaped areas such as public open space; and</li> <li>• The property owner/operator will notify all residents of site conditions and tenants and contractors of site conditions and required institutional controls and require notification of subtenants and subcontractors.</li> </ul> <p>Exhibit H to this staff report details the environmental risk management measures negotiated between City staff and PG&amp;E related to future development on the Hoedown Yard.</p>

The Hoedown Yard Option Agreement and the form of Purchase and Sale Agreement are subject to approval by the Board of Supervisors concurrent with the License. No action by the Port Commission is requested for this part of the agreement with PG&E.

## Recommendation

Port staff recommends approval of the attached resolution which approves License 15762 between the Port and PG&E, subject to approval by the Board of Supervisors and authorizes the Executive Director to enter into the License. If the Port Commission approves the resolution, Port staff proposes the following next steps:

1. Port staff will submit the License and the Real Estate Division will submit Hoedown Yard Option Agreement and form of Purchase and Sale Agreement to the Board of Supervisors for its consideration;
2. If approved, the Port Executive Director will execute the License and the City Director of Real Estate will execute the Hoedown Yard Option Agreement;
3. Port staff will coordinate with the Planning Director to provide notice to PG&E of the City's Preferred Screen for the Potrero Switchyard; and
4. Port and OEWD staff will collaborate with Forest City California to entitle the Hoedown Yard for its highest and best use as part of broader Pier 70 Waterfront Site entitlement efforts.

Prepared by: Brad Benson, Director of Special Projects

For: Monique Moyer, Executive Director

## Exhibits

- A. Premises
- B. Hoedown Yard
- C. PG&E Embarcadero Substation Service Area Map
- D. CPUC Findings from Decision Granting Certificate of Public Convenience and Necessity
- E. CPUC Adopted Mitigation Measures
- F. Hoedown Yard Appraisal Process and Valuation of Submerged Land
- G. Pier 70 Waterfront Site Conceptual Land Use Plan
- H. Hoedown Yard Environmental Risk Management Measures (City-PG&E Option Agreement)

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 14-43**

- WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San Francisco Charter Section B3.581 empower the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction; and
- WHEREAS, Pacific Gas & Electric ("PG&E") proposes to construct a new, single circuit, 230 kV transmission line between its Embarcadero Substation and its Potrero Substation, along onshore and submerged land in the Port's jurisdiction generally within the area bounded by Pier 28 ½ and portions of the shoreline at the foot of 23rd Street (the "Project"), to increase reliability of electric service to downtown San Francisco and provide operational flexibility, as further described in the staff report accompanying this resolution; and
- WHEREAS, At the Port Commission's August 14, 2012 meeting, an informational presentation about the Project was made by Port staff and Port staff was directed to negotiate a term sheet for use of Port lands for the Project; and
- WHEREAS, At its November 13, 2012 meeting, the Port Commission approved Resolution 12-90, endorsing the ZA-1 Embarcadero-Potrero 230kV Transmission Project Term Sheet ("Original Term Sheet") between the Port and PG&E and authorizing Port staff to enter into a Negotiation Agreement with PG&E, related to onshore and submerged Port land between Pier 28½ and the foot of 23rd Street and PG&E parcels Block 4110 (Lot 008A) and Block 4120 (Lot 002), commonly known as the "Hoedown Yard"; and
- WHEREAS, At its September 10, 2013 meeting, the Port Commission approved Resolution 13-34 endorsing the Revised ZA-1 Embarcadero-Potrero 230kV Transmission Project Term Sheet ("Revised Term Sheet") between the Port and PG&E related to onshore and submerged Port land, including approximately 435,600 square feet of submerged land between Pier 28½ and the foot of 23rd Street, 52,272 square feet of underground access for horizontal directional drilling and 21,120 square feet of land along 23<sup>rd</sup> Street, as shown on Exhibit A (the "Premises") and an option to acquire the Hoedown Yard (the "Hoedown Yard Option Agreement"); and
- WHEREAS, The California Public Utility Commission's ("CPUC") Energy Division staff issued a draft Mitigated Negative Declaration ("MND") on August 13, 2013, notice of the draft MND was published in the San Francisco Examiner on August 18 and 19, 2013, and a public informational meeting was held on August 20, 2013, in San Francisco; and

WHEREAS, The CPUC Energy Division received public comments from the California Department of Fish and Wildlife, the San Francisco Bay Conservation Development Commission, the San Francisco Public Utilities Commission, two members of the public, and PG&E and responded to all of the comments in the final MND, which it issued on October 30, 2013; and

WHEREAS, Although a few revisions were made to clarify and revise the discussion and certain mitigation measures described in the MND, the final MND does not identify any new significant environmental impacts, and does not omit any existing mitigation measures, from those identified in the draft MND; and

WHEREAS, On January 16, 2014, the California Public Utilities Commission ("CPUC"), as lead agency, certified the Mitigated Negative Declaration ("MND") and issued a Certificate of Public Convenience and Necessity for the Project by Decision No. 14-01-07; and

WHEREAS, On March 5, 2014, pursuant to Resolution No. 54-14, the Board of Supervisors endorsed the Revised Term Sheet, subject to several changes to the proposed Hoedown Yard Option Agreement, which will be executed by the Department of Real Estate; and

WHEREAS, Port and City staff have negotiated License 15762 (the "License") and the City's Hoedown Yard Option Agreement and form of purchase and sale agreement (the "Purchase and Sale Agreement") consistent with the terms of Port Commission Resolution 13-34 and Board of Supervisors Resolution 54-14, as described in the staff report accompanying this resolution, copies of which are on file with the Port Commission Secretary; and

WHEREAS, The Port Commission is not a party to the City's Hoedown Yard Option Agreement and form of Purchase and Sale Agreement, and is not responsible for current or future uses of the site; and

WHEREAS, All applicable mitigation measures from the CPUC MND (as shown in Exhibit E of the accompanying staff report) have been incorporated into the proposed Project, the Port Commission has imposed them as conditions of approval, and the Port will receive copies of all mitigation monitoring reports to the CPUC; now, therefore, be it

RESOLVED, That the Port Commission adopts and incorporates by reference as though fully set forth herein the mitigation measures for the project described in Exhibit E of the accompanying staff report; and, be it further

RESOLVED, That subject to approval by the Board of Supervisors, the Port Commission authorizes and directs the Executive Director of the Port ("Executive Director") to execute the License, in substantially the form on file with the Port Commission Secretary, and in such final form as is



approved by the Executive Director in consultation with the City Attorney;  
and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into other agreements, encroachment permits, and easement agreements necessary to implement the project contemplated by the License, and to enter into any additions, amendments or other modifications to the License, including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City or Port, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to enable PG&E to complete the project that the License contemplates and effectuates the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such other agreements, easement agreements and/or additions, amendments or other modifications to the License.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 10, 2014.***

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Secretary





PROPOSED PG&E  
SUBMARINE CABLES

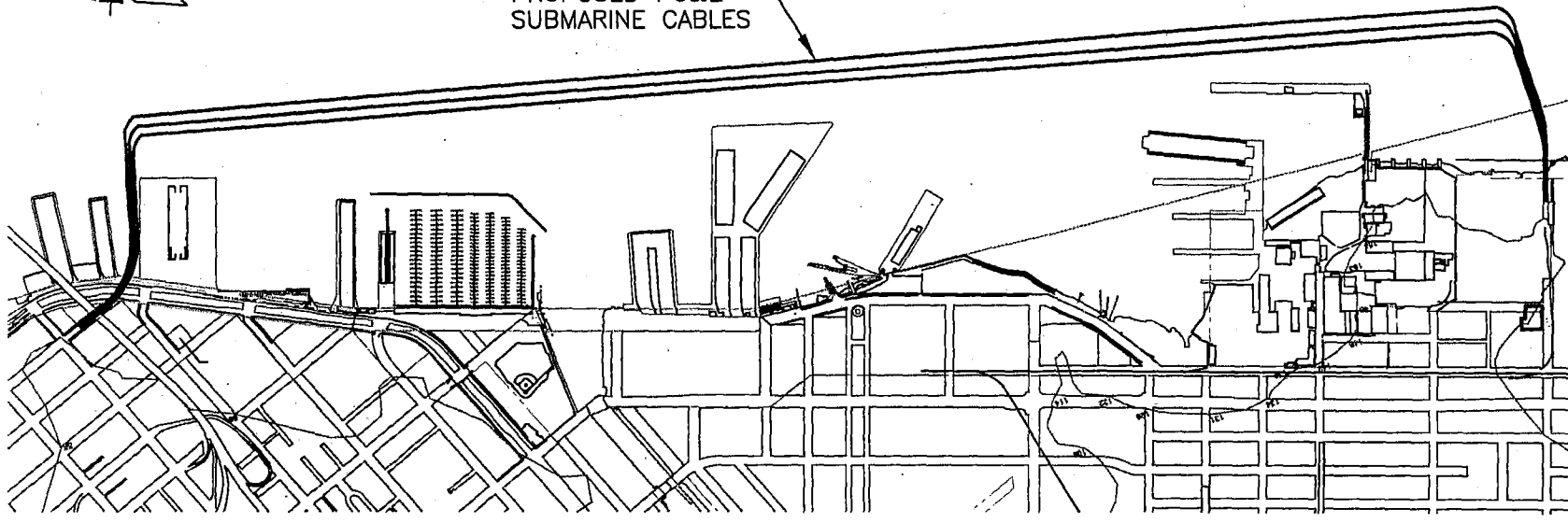
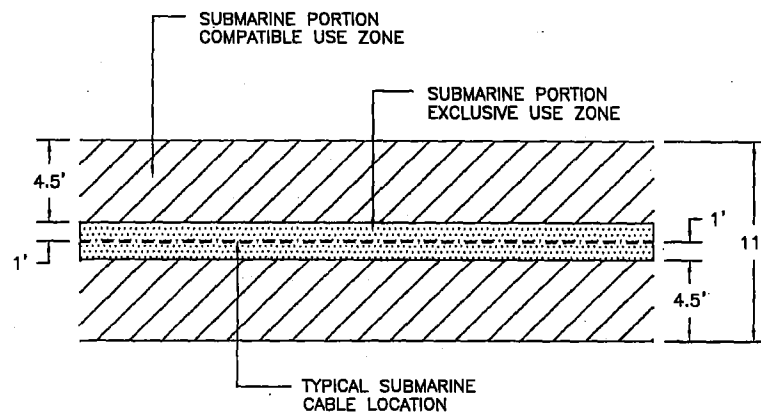
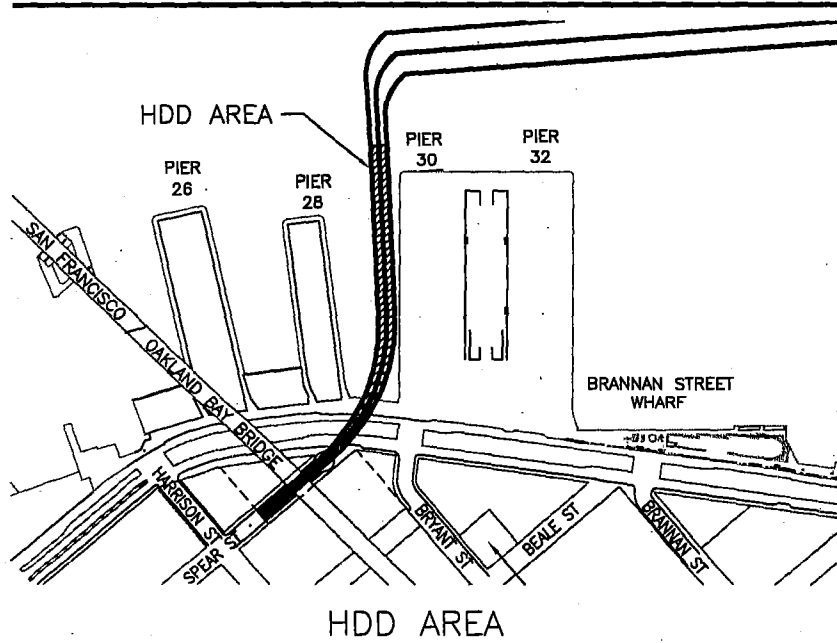


EXHIBIT A



TYPICAL SUBMERGED LAND USE  
ZONES FOR THREE CABLES

LICENSE NO.

15762



SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

LICENSEE

PACIFIC GAS & ELECTRIC CO.

DRAWN BY: ECC

DATE: JUN 4 2014

CHECKED BY: B. BENSON

SCALE: NONE

PLACE CODE NO.

SHEET NO. 1

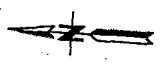
OF 2 SHEETS

INITIALS: PORT:

LICENSEE:

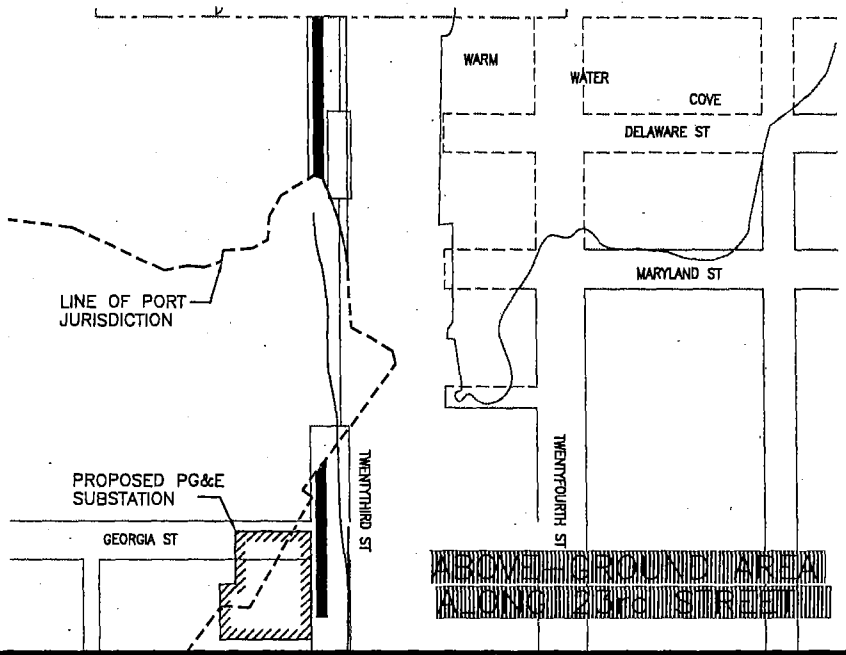
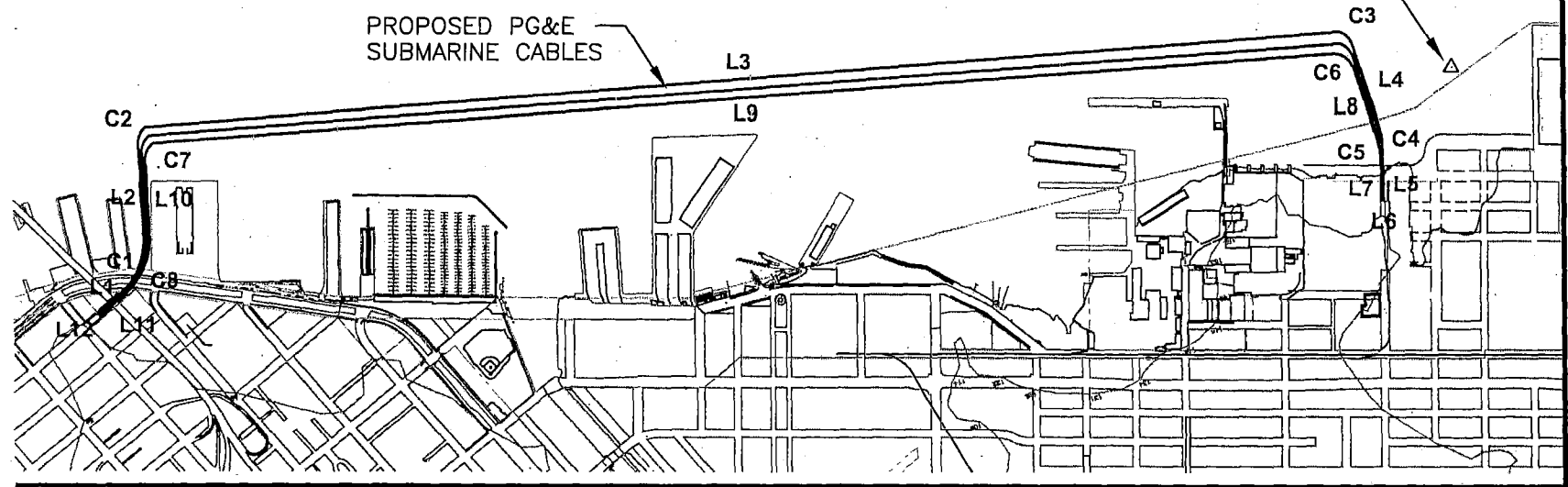
4803

DATE:



MINERAL ACCESS POINT  
2,102,550 N  
6,018,870 E

PROPOSED PG&E  
SUBMARINE CABLES



PARCEL BOUNDARIES					
COURSE NO.	DISTANCE	BEARING	COURSE NO.	DISTANCE	BEARING
L 1	241.06	S 43° 47' 51" E	C 5	R = 800.00 Lc = 246.21 Δ = 17°38'01" T = 124.08	
C 1	R = 700.00 Lc = 636.99 Δ = 52°08'18" T = 342.46		L 8	646.01	N 68° 10' 39" E
L 2	891.48	N 83° 49' 07" E	C 6	R = 196.64 Lc = 259.67 Δ = 75°39'44" T = 152.70	
C 2	R = 196.35 Lc = 167.18 Δ = 48°47'06" c = 162.18		L 9	11,046.81	N 7° 29' 05" W
L 3	11,223.46	S 7° 43' 13" E	C 7	R = 199.76 Lc = 165.96 Δ = 47°35'59" c = 161.23	
C 3	R = 198.66 Lc = 186.13 Δ = 53°40'59" c = 179.40		L 10	725.92	S 83° 55' 42" W
L 4	722.86	S 68° 10' 48" W	C 8	R = 700.00 Lc = 637.01 Δ = 52°08'24" T = 342.47	
C 4	R = 800.00 Lc = 245.74 Δ = 17°35'58" T = 123.84		L 11	297.47	N 43° 47' 43" W
L 5	507.09	S 85° 46' 37" W	L 12	25.21	N 46° 18' 10" E
L 6	20.22	N 4° 13' 37" W			
L 7	371.20	N 85° 48' 40" E			

INITIALS: PORT:

LICENSEE:

4804

DATE:

EXHIBIT A-1

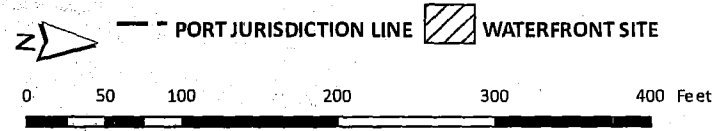
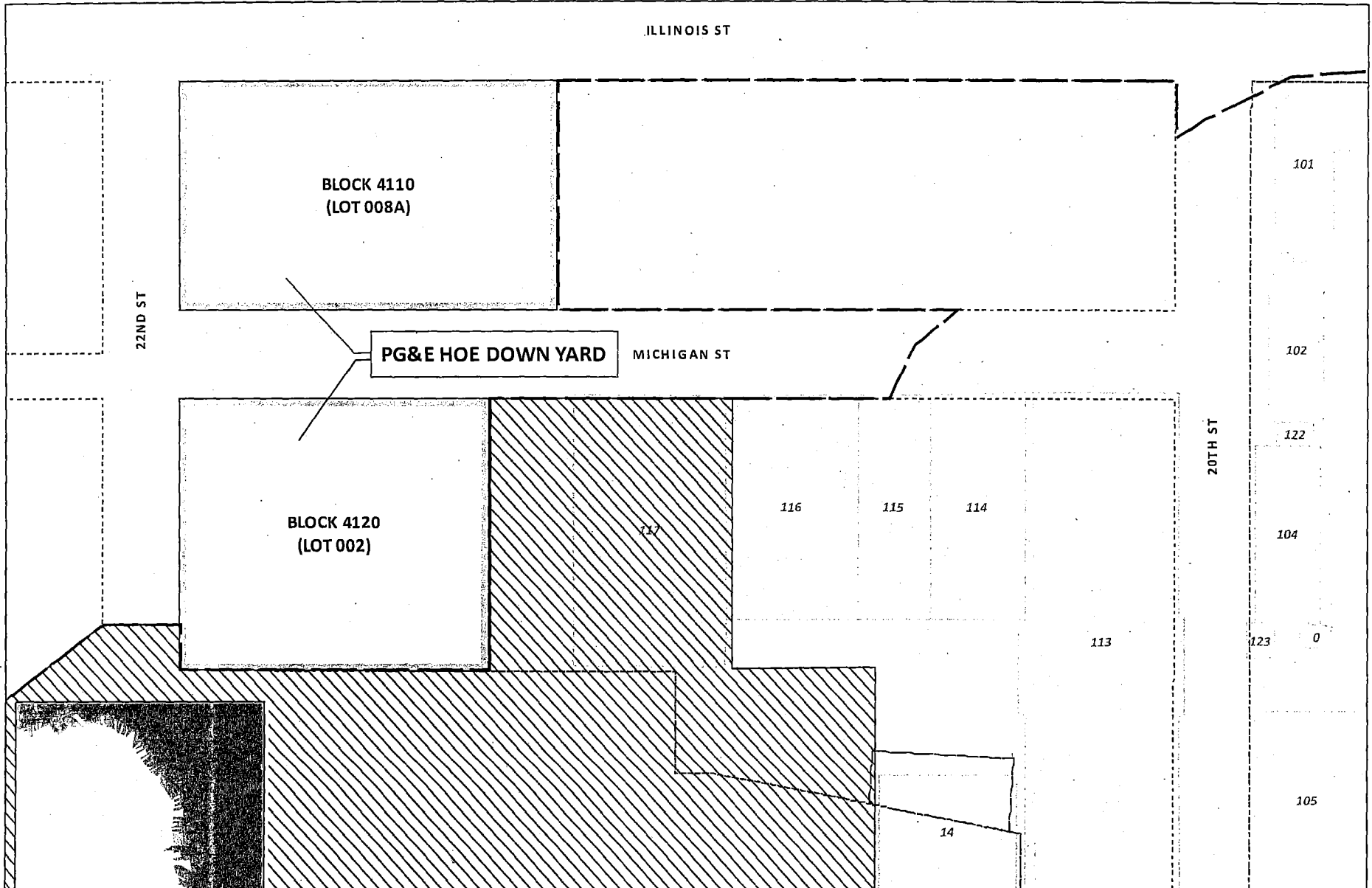
LICENSE NO.  
15762

SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

LICENSEE  
PACIFIC GAS & ELECTRIC CO.

DRAWN BY: ECC  
CHECKED BY: B. BENSON  
PLACE CODE NO.  
DATE: JUN 4, 2014  
SCALE: NONE  
SHEET NO. 2  
OF SHEETS

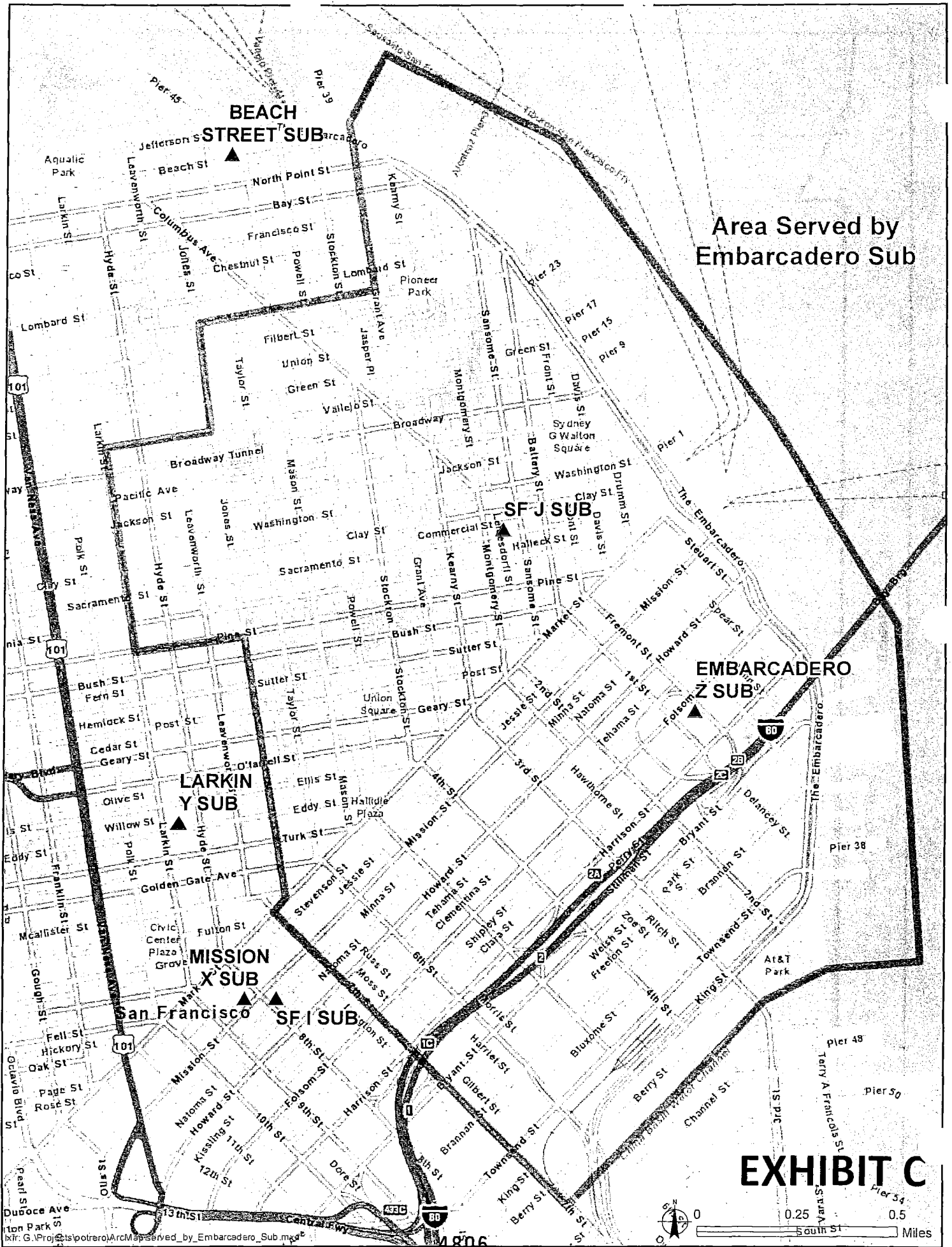
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**EXHIBIT B**  
 PG&E HOE DOWN YARD  
 PORT OF SAN FRANCISCO



# Area Served by Embarcadero Sub



**Exhibit D:**  
**CPUC Findings from January 16, 2014 Decision Granting**  
**Certificate of Public Convenience and Necessity**

**Findings of Fact**

1. There is a need to improve the reliability of electric service for downtown San Francisco to reduce the potential for extended electrical outages in a seismic event.
2. The Embarcadero-Potrero 230 kV Transmission Project will meet the need to improve the reliability of electric service for downtown San Francisco.
3. There is no cost-effective alternative to transmission facilities that meet the need to improve the reliability of electric service for downtown San Francisco.
4. No party opposes the project on the basis of community values.
5. With the implementation of the mitigation measures identified in the Mitigation Monitoring Plan identified in the MND and attached to this order, the Embarcadero-Potrero 230 kV Transmission Project will avoid any significant environmental impacts, including those with respect to public safety and the safety of utility services, recreational and park areas, historical and aesthetic values, and influences on the environment.
6. PG&E's preliminary EMF management plan for the Embarcadero-Potrero 230 kV transmission project includes no-cost and low-cost measures (within the meaning of D.93-11-013, and D.06-01-042) to reduce possible exposure to EMF.
7. The Commission has reviewed and considered the information contained in the MND and finds that it reflects the Commission's independent judgment and analysis.
8. The maximum reasonable cost for the project is \$196.8 million, including contingency.
9. Hearings are not necessary.

**Conclusions of Law**

1. The MND was completed in compliance with CEQA.
2. PG&E's preliminary EMF management plan for the Embarcadero-Potrero 230 kV Transmission Project is consistent with the Commission's EMF policy for implementing no-cost and low-cost measures to reduce potential EMF impacts.
3. PG&E should be granted a certificate of public convenience and necessity to construct the Embarcadero-Potrero 230 kV transmission project with the mitigation identified in the Mitigation Monitoring Plan, which is attached to this order.
4. If the final detailed engineering design-based construction estimate for the Embarcadero-Potrero Transmission Project is one percent or more lower than \$196.8 million, including contingency, absent good cause shown to the contrary, it is reasonable for the Commission to adopt the lower amount as the maximum reasonable cost for the project.

5. If the final detailed engineering design-based construction estimate for the Embarcadero-Potrero Transmission Project is one percent or more lower than \$196.8 million, including contingency, PG&E should, within 30 days of developing the final estimate, file an advice letter to show cause why the Commission should not adopt a lower amount as the maximum reasonable and prudent cost to reflect the final estimate.
6. This decision should be effective today.
7. Application 12-12-004 should be closed.



**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



**FINAL**  
**Mitigated Negative Declaration**  
**Pacific Gas & Electric Company's**  
**Embarcadero-Potrero 230 kV Transmission Project**  
**Application No. A.12-12-004**

**Lead Agency:** California Public Utilities Commission  
Energy Division  
505 Van Ness Avenue, 4th Floor  
San Francisco, California 94102

**Contact:** Billie Blanchard, Project Manager  
(415) 703-2068 or [billie.blanchard@cpuc.ca.gov](mailto:billie.blanchard@cpuc.ca.gov)

## **1. Mitigated Negative Declaration**

### **1.1 Project Information**

**Project:** Embarcadero-Potrero 230 kV Transmission Project  
San Francisco, California

**Project Sponsor:** Pacific Gas and Electric Company  
77 Beale Street, B30A  
San Francisco, California 94105  
(800) 743-5000

### **1.2 Introduction**

Pursuant to California Public Utilities Commission's (CPUC) General Order 131-D, Pacific Gas and Electric Company (PG&E), a regulated California utility, filed an application and Proponent's Environmental Assessment (PEA) on December 11, 2012 (Application No. A.12-12-004), for a Certificate of Public Convenience and Necessity (CPCN) to authorize construction of the Embarcadero-Potrero 230 kilovolt (kV) Transmis-

sion Project (Proposed Project). The CPUC Energy Division deemed the PEA and Application complete on January 10, 2013.

Pursuant to CEQA, the CPUC must prepare an Initial Study (IS) for the Proposed Project to determine if any significant adverse effects on the environment would result from project implementation. The IS utilizes the significance criteria outlined in Appendix G of the CEQA *Guidelines*. If the IS for the project indicates that a significant adverse impact could occur, the CPUC would be required to prepare an Environmental Impact Report (EIR).

According to Article 6 (Negative Declaration Process) and Section 15070 (Decision to Prepare a Negative Declaration or Mitigated Negative Declaration) of the CEQA *Guidelines*, a public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

- (a) *The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or*
- (b) *The initial study identifies potentially significant effects, but:*
  - (1) *Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and*
  - (2) *There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.*

Based on the analysis in the Initial Study, it has been determined that all project-related environmental impacts could be reduced to a less than significant level with the incorporation of feasible mitigation measures. Therefore, adoption of a Mitigated Negative Declaration (MND) will satisfy the requirements of CEQA. The mitigation measures included in this MND are designed to reduce or eliminate the potentially significant environmental impacts described in the Initial Study. Where a measure described in this document has been previously incorporated into the project, either as a specific project design feature or as an Applicant Proposed Measure, this is noted in the discussion. Mitigation measures are structured in accordance with the criteria in Sections 15126.4 and 15370 of the CEQA *Guidelines*.

### 1.3 Project Description

The proposed Embarcadero-Potrero 230 kV Transmission Project would include construction, operation, and maintenance of a new 230 kV transmission line entirely within the City and County of San Francisco from the Embarcadero Substation at the corner of Fremont and Folsom Streets, to the Potrero Switchyard on Illinois Street between 22nd and 23rd Streets.

The new 230 kV transmission line would be approximately 3.5 miles in total length, including approximately 2.5 miles to be installed offshore in the San Francisco Bay, 0.4 miles to be installed in horizontal directional drills (HDD) between onshore transition points and the bay, and approximately 0.6 miles to be installed underground in paved areas, including Spear Street and Folsom Street in San Francisco's Rincon Hill neighborhood. Construction of a new 230 kV switchyard would occur near the existing Potrero Switchyard, but no new substation work is proposed to occur at the existing Embarcadero Substation beyond the proposed termination of the new cable into the 230 kV bus.

PG&E's project objectives include improving the reliability of the existing transmission system in San Francisco to provide a high likelihood of continued electric service to downtown San Francisco in the

event of overlapping outages on both of two existing 230 kV transmission lines that presently feed Embarcadero Substation.

## 1.4 PG&E PEA Alternatives Considered

CEQA does not require the inclusion of an alternatives analysis in a Mitigated Negative Declaration because the Initial Study concludes that, with incorporation of mitigation measures, there would be no significant adverse impacts resulting from the Proposed Project (CEQA Guidelines Sections 15063(d) and 15071). However, PG&E was required to provide an alternative analysis in its PEA that was submitted as part of its CPCN application (A.12-12-004) for the Proposed Project.

Although no alternatives analysis is required to be provided in this document, this section summarizes the process that PG&E used to develop its Proposed Project, because this process involved evaluation of several options that could meet the project objectives. As described in the PEA, PG&E initially screened 10 potential routes, three possible transition locations for the cables at each end of the route, and three switchyard locations before narrowing the options to the following, which were further evaluated in a feasibility study (PG&E, 2012a; B&V, 2012):

- Three switchyard site location alternatives, including the proposed site immediately east of the existing Potrero Switchyard
- Two onshore alternative transmission line routes
- Proposed submarine route (Proposed Project)
- No Project Alternative

In accordance with Section IX (A)(1)(a) of CPUC General Order 131-D, PG&E provided a discussion and an evaluation of the advantages and disadvantages of each of these alternatives in the PEA, as well as a brief description of the criteria for choosing the proposed route and switchyard location. The PEA determined that the Proposed Project would have considerably less impact on urbanized areas than either of the alternative onshore routes given that it has only 0.6 mile of underground construction, and therefore, would have the least impact on urbanized residential and commercial areas, including the least construction impacts to land uses, traffic, transportation, noise, and air quality. PG&E also concluded in the PEA that the proposed route would be the most reliable seismically of the three route alternatives and would best meet the project purpose and need. PG&E selected the proposed switchyard site due to engineering feasibility and ease of connectivity to existing facilities (PG&E, 2012a). PG&E's PEA section that addresses alternatives is available at the following website:

<http://www.cpuc.ca.gov/Environment/info/aspen/embarc-potrero/pea/5-Alternatives.pdf>

## 1.5 CAISO San Francisco Peninsula Reliability Assessment

The San Francisco-Peninsula transmission system is in the center of PG&E's service territory, serving urban load centers across a unique geographic landscape. The California Independent System Operator (CAISO) considered the Proposed Project during 2011 and 2012, and during other transmission planning cycles the CAISO has or will consider other San Francisco-area proposals. On March 23, 2012, the CAISO Governing Board found the Proposed Project to be needed for reliability, as shown in its 2011-2012 Transmission Plan (pp. 107-108 of CAISO, 2012).

Since then, the CAISO 2012-2013 Transmission Plan initiated a study of the potential need for transmission reinforcement of the San Francisco Peninsula as being particularly vulnerable to lengthy

outages in the event of extreme contingencies (i.e., seismic, third-party action, and/or co-located facility failure). CAISO is in the process of conducting the San Francisco Peninsula Extreme Event Reliability Assessment to determine the need and urgency for reinforcement and is engaging stakeholders in the evaluation of risks and potential alternatives. The purpose of the CAISO study is to:

- identify the system performance after extreme events;
- identify the risk and impacts of extreme events in the San Francisco Peninsula area; and
- based upon the system performance, risks and impacts, identify potential alternatives to mitigate for the extreme events. (CAISO, 2013)

The CAISO conducted a detailed assessment and held a stakeholder meeting on May 29, 2013, soliciting comments from stakeholders by June 19, 2013. Based on the assessment, the following mitigation alternatives are going to be considered by the CAISO in developing the mitigation plan for the extreme event in the peninsula area (CAISO, 2013):

- No mitigation (not acceptable based upon the CAISO's assessment)
- Expanded mobile and spare equipment contingency plans and strategy
- Modifications or upgrades to 230 kV system
- Upgrades to 115 kV system
- New 230 kV supply into North Peninsula area:
  - Moraga
  - Pittsburg
  - East Shore
  - San Mateo

Depending upon the results, additional transmission upgrades may be brought to the CAISO Board of Governors as early as ~~September~~ in late 2013 or early 2014.

Due to the sensitive nature of the material, the reliability assessment and presentations from the stakeholder meeting are being handled on a confidential basis. However, in compliance with FERC Order 890, the CAISO provides stakeholders access to confidential information used in the transmission planning process through a secured website. Information on how to join the stakeholder process and access the secured transmission planning webpage can be found at:

[http://www.caiso.com/Documents/2012-2013\\_TransmissionPlanningProcessAdditionalStudyAssessmentMaterialsAvailableJun6\\_2013.htm](http://www.caiso.com/Documents/2012-2013_TransmissionPlanningProcessAdditionalStudyAssessmentMaterialsAvailableJun6_2013.htm).

## **1.6 San Francisco Port Commission Negotiations**

The San Francisco Port Commission (SF Port) established a Revised Term Sheet with PG&E after the August 2013 release of the Draft MND. At its September 10, 2013 meeting, the Port Commission considered Resolution 13-34 to endorse the Revised Term Sheet. In contrast to the original term sheet from November 2012, the Revised Term Sheet now contemplates a requirement for PG&E to screen or otherwise enclose the existing 115 kV Potrero Switchyard along Illinois Street between 22nd Street and 23rd Street. This means that the recent Port Commission decision to endorse the Revised Term Sheet is at least partially based on the SF Port License "obligating PG&E to screen the Potrero Switchyard" (at p.1 of the Term Sheet).

Because the Term Sheet endorsed by the Port defines a future requirement for PG&E to screen or enclose the existing Potrero Switchyard, this MND/Initial Study evaluates whether enclosing the switchyard amounts to an activity that would either be undertaken as part of the Proposed Project, caused by the project, or caused indirectly by the project. If so, the physical changes in the environment stemming from screening the switchyard would need to be disclosed to the extent they are reasonably foreseeable (see CEQA Guidelines 15064).

This MND/Initial Study does not treat screening the existing Potrero Switchyard as a reasonably foreseeable consequence of PG&E developing the Proposed Project. Although the City wishes to obligate PG&E to either enclose a substantial portion of the existing 115 kV Potrero Switchyard within a building or construct a screen around the perimeter of the switchyard, the Term Sheet itself is not contractually binding, and it does not presently commit PG&E to screening or enclosing the switchyard. The Term Sheet specifies that the City must first, within 10 years after executing the License for the Proposed Project, provide PG&E with notice of its preference, through a "Designation Notice" of the City's "Preferred Screen", which would then be subject to the Port's Waterfront Design Advisory Committee review. Following the Port's design committee review of PG&E's screening proposal, PG&E must then obtain the necessary approvals before commencing construction of the screen or enclosure. The Term Sheet also notes that negotiations will continue to occur before a License for the Proposed Project can be executed by PG&E and the Port Commission, and the binding form of the License will only become known after the present environmental review for the Proposed Project has been completed. The final terms and conditions of the negotiated transaction for the License are subject to the approval of the Port Commission.

PG&E has not presented to the CPUC any plans for an enclosure or screen at this time. After the City's designation, PG&E will need to apply for future approvals to construct the City's preferred screen, and this may require conducting a future project-level environmental review under CEQA of that proposal. PG&E notes that the purpose of the screening would be separate from the objectives of the Embarcadero-Potrero 230 kV Transmission Project, and screening could be implemented entirely separately of the Proposed Project [PG&E in Response to CPUC Data Request PD-18, General Reply to SFPUC Letter, October 3, 2013 (PG&E, 2013a)].

**Foreseeable Environmental Effects of Screening for Potrero Switchyard.** Although construction of screening for or enclosing the existing Potrero Switchyard would not be directly or indirectly caused by the Proposed Project, and no design is proposed, certain environmental effects would generally be expected from this type of project. Developing a perimeter screen for the existing 115 kV Potrero Switchyard would create impacts related to construction activity along Illinois Street between 22nd Street and 23rd Street. This could result in PG&E removing street trees along Illinois Street, creating temporary ground disturbance for the foundations or footings of the screening, and temporarily impacting parking conditions, traffic, air quality, and noise along Illinois Street during the work to install the switchyard screen. Alternatively, if the switchyard were to be enclosed within a new building, construction-phase impacts would be more intense than what would occur with building a screening wall. The primary long-term physical change to the environment would be to shield views of the existing open-air equipment and to reduce the industrial aesthetics of the existing streetscape. Overall, the City's goal is to improve the compatibility of the site with mixed uses.

## 1.71-6 Environmental Determination

The Initial Study was prepared to identify the potential environmental effects resulting from Proposed Project implementation, and to evaluate the level of significance of these effects. The Initial Study relies

on information in PG&E's PEA filed on December 11, 2012 (Application No. A.12-12-004), project site reconnaissance by the CPUC environmental team between January and March 2013, CPUC data requests, and other environmental analyses.

PG&E's PEA identified measures to address potentially significant environmental impacts — the Applicant Proposed Measures (APMs) — and these APMs are considered to be part of the description of the Proposed Project. Based on the Initial Study analysis, additional mitigation measures are identified for adoption to ensure that impacts of the Proposed Project would be less than significant. The additional mitigation measures either supplement, or supersede the APMs. PG&E has agreed to implement all of the additional recommended mitigation measures as part of the Proposed Project.

Implementation of the mitigation measures listed here and presented fully in the Initial Study would avoid potentially significant impacts identified or reduce them to less than significant levels.

#### ***Mitigation Measure for Construction-Phase Air Quality***

**MM A-1**      **Achieve minimum emission standards.** This measure incorporates and supplements portions of APM AQ-2, Minimize Construction Exhaust Emissions. PG&E shall maintain all construction equipment properly in accordance with manufacturer's specifications, and ensure that equipment is checked by a certified visible emissions evaluator. All off-road construction diesel engines not registered under the CARB Statewide Portable Equipment Registration Program shall meet at a minimum the Tier 2 California Emission Standards for Off-Road Compression-Ignition Engines as specified in California Code of Regulations (CCR) Title 13, Chapter 9, Sec. 2423(b)(1). All marine commercial harbor craft, except gasoline-powered small craft, shall meet at a minimum the Tier 2 Marine Engine Emission Standards (CCR Title 17, Sec. 93118.5).

#### ***Mitigation Measures for Special-Status Species***

**MM B-1**      **Implement an Invasive Marine Species Control Plan.** PG&E shall develop and implement an Invasive Marine Species Control Plan prior to any in-water work. The plan shall include measures designed to effectively limit the introduction and spread of invasive marine species. PG&E shall submit this plan to the CPUC for approval at least 60 days before the start of marine activities. Vessels originating outside San Francisco Bay shall follow existing compliance measures established by the California State Lands Commission as part of the Marine Invasive Species Program, relating to hull fouling and ballast water control. In addition, if used outside the San Francisco Bay area prior to use on this project, the hydroplow and associated equipment shall be examined and any invasive species handled and disposed of according to the developed plan. Similarly, if the equipment is to be used outside the San Francisco Bay after this use, the equipment shall be examined and cleaned prior to leaving the area.

PG&E shall coordinate plan preparation with the CPUC, U.S. Coast Guard, U.S. Army Corps of Engineers, National Marine Fisheries Service [NMFS], Regional Water Quality Control Board, and California Department of Fish and Wildlife [CDFW] as appropriate. The plan shall include: environmental training for all crew members working in marine areas addressing invasive marine species and actions to be taken to prevent release and spread of invasive marine species. Training shall include procedures for safe removal and disposal of any invasive species found on project equipment. Before and after boats and equipment leave the water, a qualified biologist (approved by the CPUC) shall assist

crew members in removing plants, plant debris, and any other potentially invasive species.

**MM B-2**

**Protect marine mammals from high noise levels.** PG&E shall consult with the National Marine Fisheries Service (NMFS) to determine whether Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA) for marine mammals is necessary. If NMFS determines that an IHA or LOA is not necessary, PG&E shall submit evidence of this determination to the CPUC prior to the start of marine construction activities.

**Monitoring.** PG&E shall prepare and implement a Marine Mammal Monitoring Plan. PG&E shall submit this plan to the CPUC for approval before the start of marine activities. The Marine Mammal Monitoring Plan shall include the following elements:

- Establishment of an appropriate buffer zone around the work area, generally 400 feet or as defined in consultation with NMFS, that would require work be slowed or otherwise modified if the work approaches a marine mammal within the established buffer zone.
- A qualified biologist (approved by the CPUC) shall be on board the hydroplowing ship during construction.
- The qualified biologist shall monitor marine mammal presence and behavior in the vicinity of the ship and the surface above hydroplow operations.
- The qualified biologist shall have the authority to slow or stop work, if safe to do so, and shall consult with the CPUC and NMFS about the implementation of additional minimization measures if, based on observations, project construction appears to be disrupting marine mammal behavior in ways that indicate harassment or injury.
- Any disruption of marine mammal behavioral patterns shall be reported to the CPUC and NMFS within two working days with a description of actions taken to curtail work and reduce noise source levels and a demonstration that the disruption caused no potential for injury or mortality.
- PG&E shall submit weekly reports of marine mammal observations to the CPUC during marine construction activities.

As an alternative to preparing and implementing the Marine Mammal Monitoring Plan specified in this mitigation measure, PG&E may provide adequate evidence, to the CPUC for approval at least 30 days before the start of marine activities, based upon actual data collected for this project or other projects using similar equipment in a similar submarine environment, that demonstrates to the satisfaction of the CPUC that underwater noise source levels generated by the project hydroplow and marine activities cannot be reasonably expected to exceed the 180 dB threshold recently used by NMFS for marine mammal protection.

**MM B-3**

**Protect marine species.** PG&E shall consult with CDFW to obtain an Incidental Take Permit for longfin smelt or a determination from the agency that the project ~~is~~ will not likely to adversely affect result in take of longfin smelt.

**Fish screens.** As stated in APM BIO-6, all hydroplow water jet intakes shall be covered with a mesh screen or screening device to minimize potential for impingement or entrainment.

ment of fish species, especially longfin smelt. Additional requirements to minimize or prevent entrainment and impingement are also required to supplement APM BIO-6:

- The mesh screen or screening device shall comply with applicable state (CDFW) and federal (NMFS) criteria for screening intakes such as those found in NMFS's 1996 *Juvenile Fish Screen Criteria for Pump Intakes* and CDFW's *Fish Screening Criteria* ([http://www.dfg.ca.gov/fish/Resources/Projects/Engin/Engin\\_ScreenCriteria.asp](http://www.dfg.ca.gov/fish/Resources/Projects/Engin/Engin_ScreenCriteria.asp)) or as required in coordination with by-NMFS and CDFW.

**Monitoring.** A qualified biologist (approved by CPUC) shall verify that the screens are in place at the beginning of each hydroplow work period and examine them for impinged longfin smelt or other fish species at the end of each work period, or whenever the screens are cleaned or the hydroplow is raised out of the water during the cable laying. Injury or mortality shall be reported to CPUC within two working days, with a discussion of actions taken to prevent or minimize any additional longfin smelt injury or mortality or as otherwise determined with CDFW and NMFS. Any injury or mortality of longfin smelt shall also be reported as determined in permitting discussions with CDFW and NMFS.

**MM B-4**

**Avoid impacts to nesting birds.** This measure supersedes APM BIO-2. If onshore construction activities occur during the avian nesting season, a preconstruction survey for nesting birds shall be conducted by a qualified wildlife biologist (PG&E employees or contractors, approved by the CPUC) within 7 days prior to the start of noise-generating construction or vegetation trimming or removal activities in any new work area. Surveys shall cover all public areas within 50 feet of work sites. For San Francisco County, the avian nesting season regularly occurs between February 15 and August 31, but a survey may be appropriate earlier or later depending on species, location, and weather conditions as determined by the qualified wildlife biologist.

Work areas that cause no appreciable increase in ambient noise, such as where work is performed manually, by hand, or on foot and activities that cause no observable disturbances to nesting birds (e.g., operating switches, driving on access roads, normally occurring activities at substations, staging or laydown areas) would not warrant a preconstruction survey.

**Protective measures for birds.** If an active bird nest for a species covered by the Migratory Bird Treaty Act or California Fish and Game Code is found within 50 feet of project work areas, the qualified biologist shall determine appropriate protective measures to reduce the likelihood of nest failure. Protective measures for active nests shall include one or more of the following: avoiding or limiting certain project-related activities within a designated buffer zone surrounding the nest, shielding of the nest from project disturbance using a temporary soundwall or visual screen, or other shielding method as appropriate. The width of the buffer zone (in which work may not occur) shall be based on the disturbance tolerance and conservation status of the species, and the nature of planned construction activities and other human activities in the immediate area. Buffer zones of less than 50 feet shall be allowed only when planned construction activities involve relatively low disturbance or birds have demonstrated tolerance of noise and disturbance. Buffers shall not apply to construction-related vehicle or pedestrian traffic using city streets and sidewalks. As appropriate, exclusion techniques may be used for any construction equipment that is left unattended for more than 24 hours to reduce the



possibility of birds nesting in the construction equipment. An example exclusion technique is covering equipment with tarps.

Bird species found building nests within the work areas after specific project activities begin may be assumed tolerant of that specific project activity; the CPUC approved, qualified biologist shall implement an appropriate buffer or other appropriate measures to protect such nests, after taking into consideration the position of the nest, the bird species nesting on site, the type of work to be conducted, and duration of the construction disturbance.

**Protective measures for special-status birds.** If an active nest for a special-status bird is found, PG&E shall record the position of the nest in the monitoring report and notify the CPUC through the reporting process outlined below. The qualified biologist shall implement buffers and set other protective measures (described above), as appropriate, to protect special-status nesting birds from construction activities in consultation with CPUC, and as appropriate the California Department of Fish and Wildlife (CDFW) and/or United States Fish and Wildlife Service (USFWS). Buffer zones of less than 50 feet shall be allowed only when planned construction activities involve relatively low disturbance or birds have demonstrated tolerance of noise and disturbance. Requests for buffers of less than 50 feet for special-status nesting birds must be submitted to the CPUC's independent biologist(s) for review. The CPUC's independent biologist shall respond to PG&E's request for a buffer reduction (and buffer reduction terms) within one business day; if a response is not received, PG&E can proceed with the buffer reduction. If nesting birds in the presence of the CPUC-approved qualified biologist show signs of intolerance to construction activities within a reduced buffer zone, the qualified biologist shall reinstate the recommended buffer. The recommended buffer may only be reduced again following the same process, as identified above, and after the CPUC-approved, qualified biologist has determined that the nesting birds are no longer exhibiting signs of intolerance to construction activities. Nests shall be monitored daily by the qualified biologist when construction is active at that location. Any potentially significant construction-related disturbance shall be reported to CPUC, CDFW, and USFWS.

**Monitoring.** Active nests shall be monitored at least once daily during construction until nestlings have fledged and dispersed or until nest failure has been documented. Daily nest checks shall be at least 30 minutes or more as determined by the qualified biologist based on the type of construction activity (duration, equipment being used, potential for construction-related disturbance) and other factors related to assessment of nest disturbance (weather variations, pair behavior, nest stage, nest type, species, etc.).

The qualified biologist shall record the construction activity occurring at the time of the nest check and note any work exclusion buffer in effect at the time of the nest check. The qualified biologist shall record any sign of disturbance to the active nest, including but not limited to parental alarm calls, agitated behavior, distraction displays, nest fleeing and returning, chicks falling out of the nest or chicks or eggs being predated as a result of parental abandonment of the nest. If the qualified biologist determines that project activities are contributing to nest disturbance, they shall notify CPUC (and CDFW/USFWS as appropriate in the case of special-status bird nests) and coordinate with the Construction Manager to limit the duration or location of work, and/or increase appropriate protective measures (as described above).

**Reporting.** If there are active nests present within 50 feet of the project area during construction, a weekly written report shall be submitted to CPUC. A final report shall be submitted to CPUC at the end of each nesting season summarizing all nest monitoring results and nest outcomes for the duration of project construction. No avian reporting shall be required for construction occurring outside of the nesting season and if construction activities do not occur within a reduced buffer during any calendar month. Nests located in areas of existing human presence and disturbance, such as in yards of private residences, or within commercial and or industrial properties are likely acclimated to disturbance and may not need to be monitored, as determined by the CPUC-approved, qualified biologist and approved by the CPUC's independent biologist.

**Permits.** Prior to the start of construction, PG&E may obtain a permit authorized by Section 3503 and/or Section 3503.5 of the California Fish and Game Code, or by any regulation adopted pursuant thereto, pertaining to nesting birds. If PG&E obtains such a permit under the above authorities, where that permit conflicts with the measures outlined above, the conditions of the permit shall govern.

#### ***Mitigation Measure for Preservation of Unanticipated Discoveries***

**MM C-1**      **Unanticipated discoveries of cultural deposits.** This mitigation supersedes APM CUL-4. In the event that previously unidentified archaeological, cultural, or historical sites, artifacts, or features are uncovered during implementation of the project, work will be suspended within 100 feet (30 meters) of the find and redirected to another location. The CPUC-approved cultural resources specialist shall be contacted immediately to examine the discovery and determine if further investigation is needed. If the discovery can be avoided or protected and no further impacts will occur, the resource will be documented on California Department of Parks and Recreation 523 forms and no further effort will be required.

If the resource cannot be avoided and may be subject to further impact, the CPUC-approved cultural resource specialist/archaeologist shall evaluate the resource and determine whether it is: (1) eligible for the CRHR (and thus a historical resource for purposes of CEQA); or (2) a unique archaeological resource as defined by CEQA. If the resource is determined to be neither a unique archaeological nor an historical resource, work may commence in the area. If the resource meets the criteria for either an historical or unique archaeological resource, or both, work shall remain halted, and the cultural resources specialist/archaeologist shall consult with CPUC staff regarding methods to ensure that no substantial adverse change would occur to the significance of the resource pursuant to CEQA Guidelines Section 15064.5(b).

Preservation in place, i.e., avoidance, is the preferred method of mitigation for impacts to historical or unique archaeological resources. Alternative methods of treatment that may be demonstrated ~~by~~ to the CPUC to be effective include evaluation, collection, recordation, and analysis of any significant cultural materials in accordance with a Cultural Resources Management Plan prepared by the CPUC approved qualified cultural resource specialist/archaeologist. The methods and results of evaluation or data recovery work at an archaeological find shall be documented in a professional level technical report to be filed with CHRIS. Work may commence upon completion of treatment, as approved by the CPUC.

***Mitigation Measure to Avoid Known and Potential Cultural Resources***

**MM C-2**      **Avoid known and potential shipwreck locations.** This measure incorporates and supplements portions of APM CUL-2, Resource Avoidance. During installation of the submarine cable, PG&E and its contractors shall map the as-built alignment of the cable in relation to known cultural resources, and the contractors shall ensure that the cable passes at least 100 feet to the west of the known shipwreck located in the northeastern portion of the marine geophysical survey area and mapped on NOAA Chart no.18650. In addition, prior to the installation of the cable, PG&E and its contractors shall map a 50 foot buffer around the magnetic anomaly identified by OSI as anomaly no. M63 in the southern half of the marine geophysical survey area and located at 6019099E, 2106491N, as the anomaly may result from the remains of a shipwreck buried beneath the bay floor in that location. PG&E and its contractors shall ensure that no sediment disturbing excavation or hydroplowing is conducted within the 50 foot buffer zone. If the project cannot be routed around the anomaly, additional evaluation and mitigation as detailed in Mitigation Measure C-1, for unanticipated discoveries, and detailed in the Unanticipated Discoveries Plan may be necessary prior to excavation.

***Mitigation Measure for Underground Transmission Line Construction Noise***

**MM N-1**      **Implement General Noise Control Measures.** PG&E shall implement the following general noise control measures in addition to APMs NO-1 to NO-7, with APMs NO-2 and NO-3 superseded:

- PG&E and contractors shall use equipment that incorporates noise-control elements into the design.
- PG&E and contractors shall ensure equipment exhaust stacks and vents are directed away from buildings.
- Where use of pneumatic tools, such as impact tools (e.g., jack hammers and pavement breakers), is unavoidable, a noise source screen such as a barrier around the activity using the tools, an external noise jacket, or an exhaust muffler on the compressed air exhaust shall be used and shall be designed to reduce noise levels from the source by 10 dBA.
- PG&E shall include noise control requirements in specifications provided to construction contractors. Such contract specifications would include, but not be limited to, performing all work in a manner that minimizes noise; use of equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents, day care operations, and commercial uses; and using haul routes that avoid residential buildings inasmuch as such routes are otherwise safely available.
- PG&E shall respond to and track complaints pertaining to construction noise. PG&E shall provide a complaint hotline phone number that shall be answered at all times during construction and designate an on-site construction complaint and enforcement manager for the project. The noise complaint and response process shall be described in the residential notifications required under APM NO-5 and posted publicly near work areas that are within 300 feet of residential buildings or day care operations.

**Mitigation Measure for 24-Hour HDD Noise**

- MM N-2 Obtain Special Permit for Nighttime HDD Noise.** This mitigation measure is to supplement and ensure enforceability of APM NO-6 for noise sources at the Embarcadero HDD Transition Area.
- PG&E shall apply to the San Francisco Director of Public Works and obtain a special permit for nighttime or 24-hour activity at the Embarcadero HDD Transition Area, consistent with Section 2908 of the Police Code. Prior to commencing construction of the HDD, PG&E shall provide to the CPUC a copy of the special permit or evidence that no permit is required by San Francisco.
  - PG&E shall provide to the CPUC at least 7 days prior to commencing construction of the Embarcadero HDD Transition Area the results of actual ambient hourly (Leq) noise measurements for each hour between 8:00 p.m. to 7:00 a.m. at the edge of the nearest private property containing residential use obtained from monitored noise levels as specified in APM NO-6.
  - PG&E and contractors conducting nighttime work at the Embarcadero HDD Transition Area, between 8:00 p.m. to 7:00 a.m., shall implement noise attenuation features, including acoustical barriers, blankets and enclosures as identified in APM NO-6, to achieve no more than 5 dBA above existing local ambient noise levels at the edge of the nearest private property containing residential use, based on 1-hour Leq.
  - PG&E shall provide a report to the CPUC regarding actions taken to reduce the duration or level of noise within 48 hours of monitoring noise levels found to be in excess of the ambient noise level by 5 dBA, at the edge of the nearest private property containing residential use, based on 1-hour Leq.

**Mitigation Measure for Accidental Utility Service Disruptions**

- MM UT-1 Protect underground utilities.** Prior to commencing construction of the underground transmission line, PG&E shall submit to the CPUC written documentation of the following:
- Construction plans designed to protect existing utilities, showing the dimensions and location of the finalized alignment as well as the corrosion and induced currents study;
  - Records that the Applicant provided the plans to the City and County of San Francisco for review, revision and final approval;
  - Construction plans approved by the City and County of San Francisco detailing the steps taken to prevent damage to two large SFPUC storm sewers, including but not limited to an appropriate shoring plan, work zone restrictions, and setbacks for the adjacent structures, at the following locations: (1) in the intersection of Spear and Folsom; and (2) at the end of the route as it turns to enter Embarcadero Substation;
  - Evidence of coordination with all utility owners within the approved right-of-way, including their review of construction plans, results of the induced current and corrosion potential analysis, and a description of any protection measures or compensation to be implemented to protect affected facilities;
  - Copy of the Applicant's database of emergency contacts for utilities that may be in close proximity or require monitoring during construction of the project;

- Evidence that the project meets all applicable local requirements;
- Evidence of compliance with design standards; and
- Copies of any necessary permits, agreements, or conditions of approval.

Based on the analysis and conclusions of the Initial Study, the impacts of the project as proposed by PG&E would be mitigated to less than significant levels with the implementation of the mitigation measures presented herein, which have been incorporated into the Proposed Project.

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**Exhibit F:**  
**Hoedown Yard Appraisal Process and Valuation of Submerged Land**

**Hoedown Yard Appraisals**

As described in the September 6, 2013 Port Commission staff report, Port staff commissioned an appraisal through the Department of Real Estate's ("DRE") as-needed appraiser pool to calculate the value of the license area and to calculate the value of the Hoedown Yard (discussed below). The City selected Associated Right of Way Services, Inc. to conduct the appraisal, and PG&E concurred with the selection. This appraisal indicated industrial land values that exceeded the expectations of both Port and PG&E staff. PG&E requested the Port's authorization to conduct a second appraisal, which Port staff granted, and PG&E conducted its own appraisal, subject to appraisal instructions approved by the Port, utilizing David Tattersol & Associates, an appraiser also listed in DRE's as-needed pool.

In both instances, appraisal instructions were to determine:

- (a) the fee simple value of the Site assuming raw clean undeveloped land subject only to current zoning (M-2), i.e., market value; and
- (b) the fee simple value of the Site "AS-IS" with all faults using assumptions as to the cost of compliance with the Site Management Plan and any other documents provided ... that affect value.

The conclusions of these appraisals were presented in a November 23, 2012 final appraisal report by Associated Right of Way Services, Inc. and a February 13, 2013 final appraisal report by David Tattersol & Associates, done in compliance with Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP). The average of the land value indicated by these two appraisals is \$68.50 per square foot which affects both the submerged license area and the Hoedown Yard.

**Valuation of Submerged Land**

The approach to establishing rent for the submerged license area is based on industrial upland values. The process for valuing the Hoedown Yard requires the same analysis. City staff and PG&E representatives therefore agreed to use a single appraisal (using the same set of comparable land values of \$68.50 psf) for purposes of valuing both the submerged license area and the Hoedown Yard.

In establishing rent for the proposed license area, most of which is submerged land, Port staff and PG&E agreed on the following formulas:

- Exclusive use areas: 50% industrial upland value (\$68.50 psf) x 8% capitalization rate

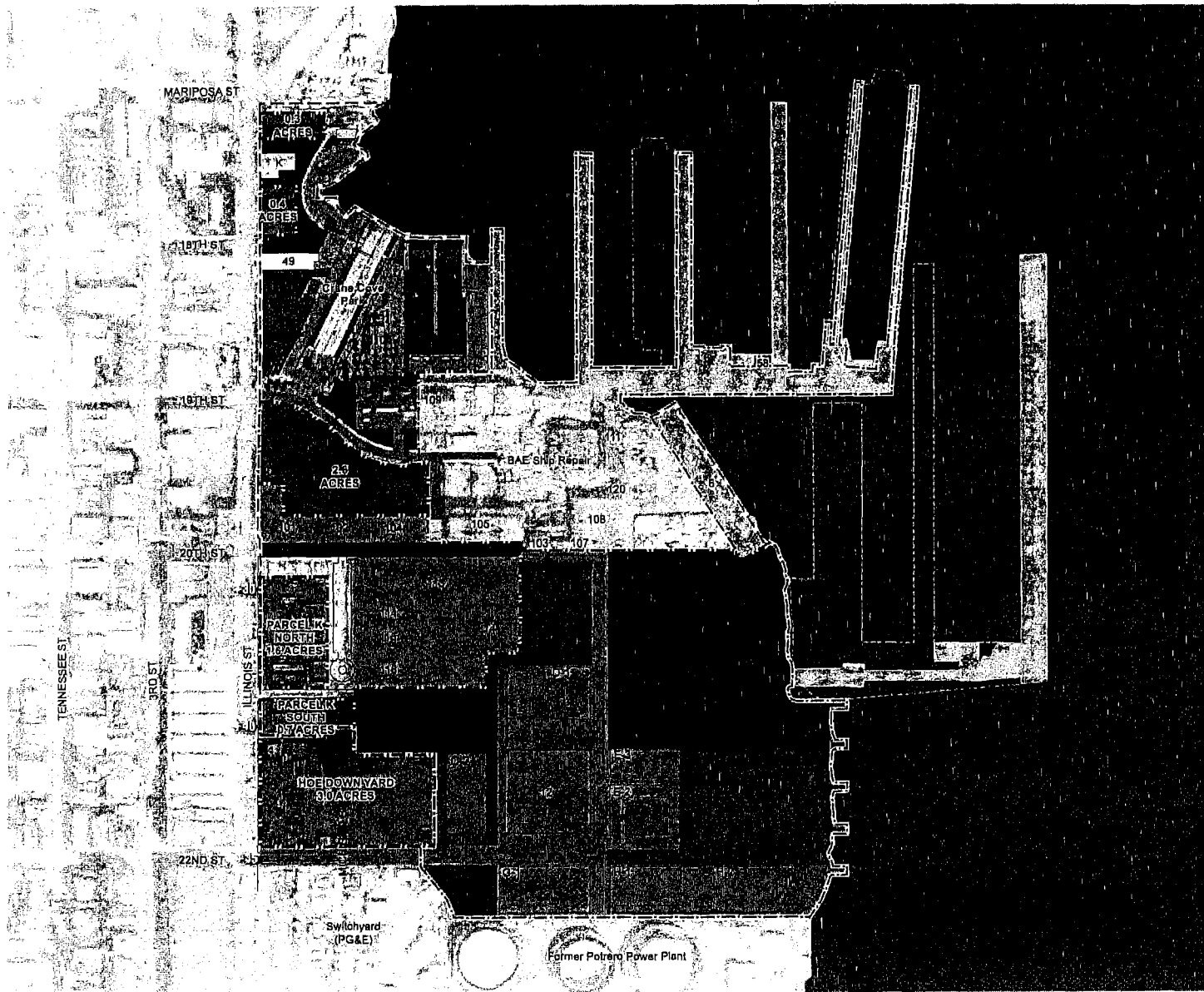
- Compatible (non-exclusive) use areas: 25% industrial upland value (\$68.50 psf) x 8% capitalization rate
- Upland underground areas: \$0.031562/sf, based on the rate for like property in the Hunters Point-Potrero license area
- A two year construction period rent for the same areas, reduced by 75%

The parties agreed to a prepaid rent structure for the initial forty (40) year term of the agreement utilizing a 6.5% discount rate, which is the current estimated blended average of the Port's costs of funds.



# Exhibit G: Pier 70 Conceptual Land Use Plan, Including the Hoedown Yard

4825



**LEGEND**

- PIER 70 AREA
- WATERFRONT SITE
- ILLINOIS STREET SITES
- BAE SITE
- PILE SUPPORTED PIER
- PRESENTLY SUBMERGED

**WATERFRONT SITE**

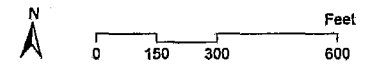
- PHASE 1
- PHASE 2
- PHASE 3
- PHASE 4

**ILLINOIS ST. PARCELS**

- ORTON/20TH ST. HISTORIC CT
- PHASE 1
- TO BE DETERMINED

**PHASING PLAN**

PIER 70 MASTERPLAN  
ILLINOIS PARCELS INITIAL STUDY



FORESTCITY AECOM SITELAB

May 24, 2013

**Exhibit H:  
Environmental Risk Management Measures**

The Hoedown Yard Option Agreement and form of Purchase and Sale Agreement will require the following approach to remedial action and environmental risk management.

Pacific Gas and Electric Company (PG&E) agrees to allow the City and County of San Francisco (City) or a subsequent third-party owner of the Hoedown Yard to seek San Francisco Bay Regional Water Quality Control Board (Water Board) approval to amend the Covenant and Environmental Restriction on Property currently encumbering the Hoedown Yard (Land Use Covenant). The purchaser will be required periodically to certify to PG&E and the City regarding compliance with the following requirements and any other requirements the Water Board imposes as conditions to amending the existing Land Use Covenant. Each certificate must be supported by the written report of an independent third-party onsite construction monitor.

The City and PG&E (parties) acknowledge that PG&E's past testing of conditions at the Hoedown Yard has characterized the site to the satisfaction of the Water Board, which the parties agree is adequate for its current use. PG&E agrees not to conduct further testing of the Hoedown Yard unless required by an order of a regulatory agency.

PG&E agrees not to impose its own land use covenant restricting future uses of the Hoedown Yard. If a potential purchaser or future owner, through site investigation, discovers new conditions, the party making the discovery will be required to disclose to PG&E, the City, and the Water Board and any other regulatory agency with jurisdiction for the agency's direction on whether further investigation, remediation, monitoring, or other measures will be imposed by order or through amendments to the Land Use Covenant. PG&E, the City, and the potential purchaser or future owner will have the right to submit comments to the Water Board for consideration in its deliberations.

The City will require any purchaser of the Hoedown Yard to indemnify and hold harmless PG&E from liability, including liability for personal injury, property damage, or further cleanup, during and after the construction of any new uses on the Hoedown Yard. The purchaser's indemnification obligation to PG&E must be secured by a letter of credit in the amount of \$1 million for a period of three years, beginning on the date a certificate of occupancy is first issued for any new building at the Hoedown Yard.

**Authorized Land Uses and Remedial Actions**

<b>Category</b>	<b>Possible New Uses</b>	<b>Remediation</b>
1	High-density residential; temporary lodging; enclosed recreational, commercial, institutional.	Install and maintain <b>Durable Cover</b> . Implement <b>Institutional Controls</b>
2	Public open space covered by hardscape.	Same as above

3	Public open space covered by "softscape," including landscaping.	Install and maintain 3-foot layer of <b>Clean Soil</b> underlain by a <b>Demarcation Layer</b> between native soil and ground surface. The <b>Clean Soil</b> layer will cover landscaped areas, including raised landscaping planters, and line tree pits. The thickness of <b>Clean Soil</b> layer will be increased if needed to include root bearing zones and below-grade irrigation systems.
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**Acceptable forms of Durable Cover:**

- All forms of Durable Cover must meet applicable standards of the San Francisco Public Works Code, the Port Building Code, and any other applicable rules or regulations
- Buildings and building foundations.
- Streets and sidewalks.
- Hardscapes, parking areas, pathways or similar areas paved with concrete, asphalt, stone, or other material of sufficient durability to withstand usage and prevent exposure of native soil. Cover for pedestrian paths must include at least a 4-inch thick layer of aggregate base beneath at least a 2-inch layer of asphalt, concrete, stone, or crushed or decomposed stone paving. Paving stones with interstitial exposed native soil will be subject to requirements for softscape.
- Demarcation Layer must provide a visual indicator that distinguishes Clean Soil above the Demarcation Layer from underlying native soil. The Demarcation Layer will serve as a visual and physical deterrent to further excavation. It need not be impermeable to vapor or water, but must be resistant to penetration by hand tools.

**Land Use Controls:**

1. School, daycare, and hospital uses will be prohibited.
2. Private open space at grade will be prohibited; private roof top, balcony, or similar open space will be permitted.
3. Except as specified in this document, any permitted uses will be permitted on the ground floor as well as above ground floor.
4. Use of groundwater for any purpose other than dewatering will be prohibited.
5. Growing plants for human consumption in native soil will be prohibited.
6. Removal of identified areas of arsenic-impacted soil to achieve site-specific background concentration of arsenic as defined and summarized in *Report of Results – Additional Soil Investigation, Hoe Down Yard (AMEC, 4/12/11)*.

**Disclosure:**

- Property owner/operator will notify all tenants and contractors of site conditions and required Institutional Controls and require notification of subtenants and subcontractors.

- Property owner/operator will disclose environmental conditions and Institutional Controls to residents.

**Institutional Controls:**

Property owner/operator will implement Institutional Controls including:

- Controlled access prior to and during construction.
- Environmental health and safety plans for construction and maintenance workers.
- Dust control during construction and maintenance.
- Stormwater pollution prevention during construction.
- Regular inspection, maintenance, and repair of Durable Covers
- Implementation of a Water Board-approved revised Risk Management Plan.
- The purchaser will be required to implement or participate in a funding mechanism that provides sufficient funds for maintenance and capital repair of public use areas in accordance with the Risk Management Plan for the life of the public use areas.

**Definitions**

“Native” or “existing soil” means soil present at the site, regardless of its provenance, as of the date PG&E transfers title to the Hoedown Yard as contemplated by the Option Agreement.

“Clean Soil” means soil that will be used on site in a manner that presents potential for exposure to future site users, such as soil used to create the 3-foot thick layer of Clean Soil required for landscaped areas. Clean Soil must meet the prevailing standards (i.e., Environmental Screening Levels (as defined by the Water Board and published at [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/esl.shtml](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml)) or California Screening Levels (as defined by Cal/EPA and published at <http://oehha.ca.gov/risk/soil.html>) or Water Board-approved site-specific background levels applicable to the current or planned land use (i.e., less than or equal to commercial standards for commercial site use, and less than or equal to residential standards for residential site use). Imported soil that will be placed under one of the acceptable forms of Durable Cover does not have to meet standards for Clean Soil.

June 24, 2014 for Board of Supervisors file.

**OPTION AGREEMENT  
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

by and between

**PACIFIC GAS AND ELECTRIC COMPANY,**  
a California corporation,  
as Optionor,

and

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, as Optionee

**Hoedown Yard, located at 22<sup>nd</sup> Street & Illinois Street,  
San Francisco, California**

[ \_\_\_\_\_ ], 2014

June 24, 2014 for Board of Supervisors file.

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**OPTION AGREEMENT  
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY** (this "**Agreement**"), dated for reference purposes only as of [            ], 2014, is by and between **PACIFIC GAS AND ELECTRIC COMPANY** ("**PG&E**" or "**Optionor**"), a California corporation, and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**" or "**Optionee**"), acting by and through the Real Estate Division of its General Services Agency (PG&E, City, and their successors and permitted assignees, each, a "**Party**"). Capitalized and other defined terms used in this Agreement have the meanings given to them, or are defined where indicated, in *Article 15*.

**RECITALS**

**A.** PG&E intends to install, operate, and maintain a new, single circuit, 230 kV transmission line between its Embarcadero and Potrero Substations (the "**ZA-1 Line**") to increase reliability of electric service to downtown San Francisco and provide operational flexibility (the "**Cable Project**"). The Cable Project will involve both transmission line work and substation work, including the construction of an approximately 3.5-mile, 230 kV submarine and underground cable route for three cables between PG&E's Embarcadero and Potrero Substations.

**B.** The City, through its Port Commission of San Francisco (the "**Port**" or the "**Port Commission**"), owns submerged and tidal lands on which PG&E desires to locate a portion of the ZA-1 Line. PG&E is entering into a license with the Port (the "**License**") that will allow PG&E to use Port property needed to construct, maintain, and operate the ZA-1 Line. PG&E will also need approvals from other City departments and agencies for the construction, maintenance, and operation of the Cable Project.

**C.** PG&E owns approximately 130,720 square feet of real property commonly known as the Hoedown Yard, located at 22<sup>nd</sup> and Illinois Streets in San Francisco, California, identified as Assessor's Block 4110, Lot 008A, and Block 4120, Lot 002, as more particularly described in *Exhibit A* (the "**Option Property**"). The Option Property is bisected by a portion of a right-of-way owned by the City (the "**Paper Street**").

**D.** PG&E completed a site investigation and human health risk assessment of the Option Property under the oversight of the San Francisco Bay Regional Water Quality Control Board (the "**Water Board**"), which determined that PG&E will not be required to further remediate conditions at the site on condition that activities at the Option Property comply with: (1) a Water Board-approved Site Management Plan dated as of June 22, 2012 ("**SMP**"), a copy of which is attached as *Exhibit D*; and (2) a Covenant and Environmental Restriction on Property recorded on November 6, 2012 in the Official Records of the City and County of San Francisco ("**Official Records**") as Instrument No. 2012J538847 (the "**Deed Restriction**"), a copy of which is attached as *Exhibit E*, which, among other things, limits land use at the Option Property to commercial and industrial uses.

**E.** In consideration of the Port's agreement to enter into the License with PG&E and City's agreement to enter into other agreements required for the Cable Project, PG&E is granting City an exclusive and irrevocable option to purchase the Option Property (the "**Option**") on the terms set forth in this Agreement. City will exercise the Option and enter into a purchase and sale agreement with PG&E for the Option Property only if: (1) the Option is transferred to a third party that agrees to pay the full Purchase Price (defined below) for the Option Property and assumes all other obligations of City under this Agreement; or (2) a City department proposes a public use for the Option Property that conforms to regulatory requirements and has an identified funding source to pay the Purchase Price.

**F.** The Port Commission endorsed a revised term sheet (the "**Term Sheet**") for the License and the Option by Resolution No. 13-34 on September 10, 2013. The San Francisco Board of Supervisors (the "**Board**") endorsed the Term Sheet by Resolution No. 54-14 on February 25, 2014.

**G.** The Option Property is adjacent to the Port's 69-acre Pier 70 development area and across Illinois Street from the 25-acre Waterfront Site within Pier 70. The Port is in exclusive negotiations with a developer for the mixed-use development of the Waterfront Site. In a term sheet for the Waterfront Site that both the Port Commission and the Board have endorsed, the developer agreed to include the Option Property in any planned rezoning of the Waterfront Site through a special use district ("**SUD**"), conditioned upon PG&E's consent. PG&E has consented to the rezoning on the conditions set forth in *Section 7.7*.

**H.** The California Public Utilities Commission ("**CPUC**"), as lead agency, adopted a mitigated negative declaration in accordance with the California Environmental Quality Act for the Cable Project by Decision No. 14-01-07 on January 16, 2014.

**I.** The Port Commission authorized the Port Executive Director to execute the License by Resolution No. [XX] on [date], subject to approval by the Board of Supervisors, which the Board of Supervisors granted by Resolution No. [XX], on [date].

**J.** The Board approved and authorized the Director of Property to execute this Agreement and to take all other actions to implement this Agreement (but not to enter into the Purchase Agreement or purchase the Option Property) without further approval or other action by the Mayor or the Board by Resolution No. [XX] on [date].

## AGREEMENT

### 1. GRANT OF OPTION.

In consideration of the Port License and other City agreements required for the Cable Project, PG&E grants to City the Option. PG&E acknowledges that the value it has received or will receive for the Option is sufficient consideration for: (a) granting an exclusive and irrevocable right to City under this Agreement; (b) keeping the Option Property off the market for the term of this Agreement; and (c) restrictions on PG&E's use of the Option Property during the term of this Agreement as set forth in *Article 7*.

## 2. TERM.

This Agreement will be effective on the date that each Party has fully executed and delivered it to the other Party (the "**Effective Date**") and will terminate upon the first to occur of the following, unless Optionor agrees to an extension of the applicable date (the "**Expiration Date**"): (a) Optionee's failure to timely exercise the Option in accordance with *Section 3.1*; (b) the Effective Date of the Purchase Agreement (as defined therein); or (c) the date on which a termination of this Agreement by Optionee becomes effective.

## 3. EXERCISE OF OPTION.

### 3.1. *Option Exercise.*

(a) Subject to *Article 4*, Optionee may exercise the Option by delivering notice to Optionor (the "**Exercise Notice**") in accordance with *Section 12.1*, together with executed counterparts of a purchase agreement substantially in the form of *Exhibit A* or as otherwise amended by the agreement of Optionor and Optionee (the "**Purchase Agreement**") (with all blanks appropriately completed), within the "**Option Exercise Period**," which means the period between January 1, 2018 (or, if earlier, the date specified in PG&E's Relocation Notice in accordance with *Section 4.3*) and June 30, 2021.

(b) Optionee will specify in the Exercise Notice the date by which close of escrow for Optionee's purchase of the Option Property from Optionor will occur, which date must be no earlier than 90 days and no later than 120 days after Optionee's delivery of the Exercise Notice, subject to extension as set forth in the Purchase Agreement (in any case, the "**Closing Date**"). Optionor acknowledges receipt of a copy of Board Resolution No. \_\_\_\_\_, which authorizes the Director of Property to execute this Agreement and take all other actions to be taken by City to effectuate the Option, and also urges the Director of Property to seek Board of Supervisors authorization to conduct a competitive sale of the Option to a third party or to close the purchase transaction under the Purchase Agreement on behalf of a City department.

3.2. *Execution and Delivery of Purchase Agreement.* Provided that the Purchase Agreement is substantially in the form of *Exhibit A* or as otherwise amended by the agreement of Optionor and Optionee (with all blanks appropriately completed), within 30 days after Optionee delivers the Exercise Notice to Optionor, Optionor must execute and deliver the fully executed counterparts of the Purchase Agreement to the Title Company designated in the Purchase Agreement.

3.3. *Period to Close.* If Optionee timely exercises the Option, Optionor will sell, and Optionee will purchase, the Option Property on the terms and conditions of a Purchase Agreement in all material respects in the form attached as *Exhibit C* or as otherwise amended by the agreement of Optionor and Optionee.

3.4. *Right to Rescind Exercise.* At any time after Optionee's delivery of the Exercise Notice until the Closing Date, if this Agreement or the Purchase Agreement has not otherwise terminated, Optionee may elect, in its sole discretion, to rescind the Exercise Notice (or the

Purchase Agreement, if executed and delivered) without payment of any fee, penalty, or other charge to Optionor. After rescission, the Option will remain in effect until the Expiration Date.

#### 4. RELOCATION; CPUC APPROVAL.

4.1. *Relocation Before Option Exercise Period.* PG&E has begun to look for other locations suitable for relocating its current operations at the Option Property.

4.2. *Acknowledgement.* Optionee acknowledges that because PG&E is a regulated utility, its sale of the Option Property may be subject to the prior review and approval of the CPUC ("**CPUC Approval**"). PG&E, in its reasonable business judgment, shall determine, and advise Optionee promptly after making the determination, whether CPUC Approval is required.

4.3. *Relocation Notice, Option Exercise Period, and CPUC Approval.* The Parties will cooperate to enable PG&E to relocate before Optionee's exercise of the Option as follows:

(a) PG&E shall exercise reasonable efforts to relocate its operations from the Option Property by June 30, 2017 or, if it has not been able to identify a suitable alternative property for its operations, by December 31, 2020.

(b) PG&E shall provide notice to Optionee delivered in accordance with *Section 12.1* after PG&E has successfully relocated its operations (a "**Relocation Notice**"). The Relocation Notice will specify the date on which the Option Exercise Period will begin, if earlier than January 1, 2018.

(c) If PG&E has not provided a Relocation Notice by December 31, 2020, Optionee may exercise its Option and within 60 days after receipt of the Exercise Notice, PG&E shall seek CPUC Approval.

(d) CPUC Approval will not be deemed to have occurred for purposes of this Agreement or the Purchase Agreement until CPUC Approval is final, unconditional, and unappealable, including exhaustion of all administrative appeals or remedies before the CPUC.

(e) Optionee acknowledges that PG&E will have the right to make reasonable objections to the CPUC's proposed accounting and ratemaking treatment of the sale, which may delay the issuance of CPUC Approval.

(f) If CPUC Approval is required, the obligation of each Party to close the sale of the Option Property will be conditioned on prior CPUC Approval.

4.4. *No Warranty.* PG&E makes no representation or warranty with respect to the likelihood or timing of CPUC Approval. Except as provided in *Section 11.2*, Optionee waives all claims against PG&E for losses, expenses, or damages suffered or incurred by Optionee as a result of the need for CPUC Approval, any delay in receipt of CPUC Approval, or a decision of the CPUC to disapprove PG&E's sale of the Option Property if PG&E exercises reasonable efforts to obtain CPUC Approval, if required, and accepts reasonable conditions to CPUC

Approval. If the CPUC disapproves PG&E's sale of the Option Property, PG&E will have no obligation to appeal the CPUC's determination, and this Agreement will automatically terminate.

## 5. PURCHASE PRICE.

The purchase price for the Option Property (the "**Purchase Price**") is \$63.37 per square foot (the "**Square Footage Rate**"), which the Parties agree is its fair market value as established by an appraisal process that the Parties concluded before entering into this Agreement. The Square Footage Rate will not change even if the Option Property is rezoned or other events occur that might affect land values. Thus, if the Option Property is finally determined to have an area of 130,720 square feet, then the Purchase Price would be \$8,283,726.40. Either Party may elect, at its sole expense, to engage a surveyor licensed by the State of California to survey the Option Property and determine the exact area of the Option Property. The Party electing to obtain a survey agrees to deliver a copy of the survey to the other Party before June 30, 2017. If neither Party elects to obtain a survey of the Option Property, the area of the Option Property will be conclusively deemed to be 130,720 square feet.

## 6. ASSIGNMENT.

At any time before the Expiration Date, City has the absolute right to assign all of its interest in and rights under this Agreement (a "**Transfer**") to any other Person without Optionor's prior consent or any payment, fee, or other form of additional consideration to Optionor, by an assignment and assumption agreement substantially in the form attached as *Exhibit F* (the "**Assignment and Assumption Agreement**"). City will give notice to PG&E of legislation and reports submitted to the Board regarding any Transfer and provide a complete copy of the fully executed Assignment and Assumption Agreement to PG&E promptly upon request. PG&E agrees that City's failure to provide notice or copies of documents to PG&E will not affect the validity of any Transfer by City. The Parties agree that City's absolute right of Transfer under this Agreement is a material part of the bargained-for consideration under this Agreement.

## 7. USE OF OPTION PROPERTY AFTER EFFECTIVE DATE.

The following restrictions on use of the Option Property will apply during the term of this Agreement.

7.1. **Current Operations.** PG&E may continue its current uses on the Option Property: proprietary (non-public) vehicle parking, equipment storage, temporary stockpiling of broken concrete slabs, mixed soil, sand, gravel, asphalt, and other debris generated during PG&E's subsurface utility maintenance operations, welding, and a shaker operation to separate materials.

7.2. **Compliance with SMP and Deed Restriction.** PG&E will comply with the SMP and the Deed Restriction.

7.3. **Change of Use.** PG&E agrees to provide notice to City of any PG&E decision to change its use of or to construct any new buildings on the Option Property.

7.4. **Contracts.** Optionor will:

(a) not enter into any new options, leases, licenses, use agreements, management, service, or other contracts applicable to the Option Property (each, a "**New Property Contract**") that grant any third party the right to own, possess, use, occupy, improve, or alter the Option Property after the Closing Date; and

(b) terminate all existing options, leases, use agreements, management, service or other contracts applicable to the Option Property ("**Existing Property Contracts**") before or as of the Closing Date.

7.5. **Encumbrances and Liens.** Optionor may not encumber the Option Property with any instrument that will not be released by an instrument recorded in the Official Records before the Closing Date.

7.6. **Environmental Covenants.** During the term of this Agreement, Optionor agrees not to conduct further environmental testing of the Option Property unless required by order of a regulatory agency. In addition, except through recordation of the Release and Indemnity Agreement described in **Section 7.7**, Optionor agrees not to impose its own covenant restricting future uses of the Option Property.

7.7. **Consent to Rezoning after Sale.** PG&E has consented to the inclusion of the Option Property in a planned SUD for the Port's adjacent Waterfront Site at Pier 70 or other rezoning effort, on the conditions that: (1) any rezoning affecting the Option Property not take effect until after its sale to Optionee; (2) any rezoning affecting the Option Property is subject to all regulatory restrictions on the Option Property, including those imposed by the Water Board; (3) any modification of the Deed Restriction will not take effect until after the Closing Date; (4) in addition to any requirements imposed by the Water Board, prior to or concurrently with any redevelopment of the Option Property, Optionee has agreed to implement remediation measures in accordance with the requirements outlined in **Exhibit G** entitled "Environmental Risk Management Measures" and a release and indemnity agreement substantially in the form of **Exhibit H** to the Purchase Agreement ("**Release and Indemnity Agreement**") is recorded against the Option Property on the Closing Date; and (5) any rezoning affecting the Option Property does not impose any out-of-pocket monetary or other obligations on PG&E, encumber the Option Property, or otherwise have any effect on PG&E or its use of the Option Property prior to the Closing Date. PG&E agrees not to object to City's efforts to rezone the Option Property through the planned Waterfront Site SUD or otherwise as long as Optionee meets the conditions of this Section.

7.8. **Financing Districts.** PG&E acknowledges that City intends to form an infrastructure financing district under California Government Code sections 53395 *et seq.* and a community facilities district under the Mello-Roos Community Facilities Act of 1982 (Calif. Gov. Code §§ 53311 *et seq.*), each covering Pier 70 to finance public infrastructure serving Pier 70. PG&E agrees, at no out-of-pocket expense to PG&E, to reasonably cooperate in taking actions necessary to annex the Option Property to each of these districts, on the condition that no special taxes or other assessments will be assessed against the Option Property until after the Closing Date.



**8. RELOCATION OF PG&E'S OPERATIONS.**

PG&E has begun to look for other locations suitable for relocating its current operations at the Option Property. PG&E will use commercially reasonable efforts to relocate its operations, including any transmission lines serving its operations, from the Option Property to another location prior to December 31, 2016. PG&E acknowledges that this obligation is a material part of the bargained-for consideration for this Agreement and that its failure to use commercially reasonable efforts to so relocate its operations will be a PG&E Default under *Section 11.1* causing City actual harm and entitle City to receive the Termination Fee under *Section 11.2(b)(ii)*.

**9. AGREEMENT NOT TO TRANSFER OR MARKET OPTION PROPERTY.**

9.1. *Prohibition on Marketing and Transfer.* PG&E agrees to hold the Option Property off of the market and acknowledges its understanding that it will be precluded from negotiating with any other person for, or actually effecting, the sale or transfer of any interest in the Option Property while this Agreement is in effect. A transfer of ownership to another subsidiary of PG&E Corporation will not violate this provision if the transferee will be bound by this Agreement.

9.2. *Termination Fee.* PG&E agrees that PG&E's transfer of the Option Property in violation of *Section 9.1* would be a PG&E Default under *Section 11.1* causing City actual harm from, which would entitle City to the Enhanced Termination Fee under *Section 11.2(a)*.

**10. REPRESENTATIONS AND WARRANTIES OF OPTIONOR.**

Optionor represents and warrants as of the Effective Date as follows:

10.1. *Valid Existence; Good Standing.* Optionor is a corporation that is duly formed and validly existing under the laws of the State of California. Optionor has all requisite power and authority to own its property and conduct its business as presently conducted. Optionor is in good standing in the State of California.

10.2. *Authority.* Optionor has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms of this Agreement and the agreements contemplated by this Agreement, other than CPUC Approval, if required.

10.3. *Ability to Perform.* Nothing in Optionor's by-laws, other agreements and obligations, or applicable laws in any way prohibits, limits, or otherwise affects its right or power to enter into and perform all of the terms of this Agreement, other than CPUC Approval, if required. Other than CPUC Approval, if required, no consent, authorization, or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body, or any other person is required for Optionor to execute, deliver, and perform this Agreement.

10.4. *Self-Insured.* PG&E is self-insured and has provided evidence of its self-insured status satisfactory to City's Risk Manager:

10.5. **Financial Obligations.** To Optionor's actual knowledge, Optionor is meeting current liabilities with respect to the Option Property as they mature; no federal or state tax liens have been filed against the Option Property; and Optionor is not in default under any agreement to borrow money to improve or operate the Option Property.

10.6. **No Improvement Contracts.** To Optionor's actual knowledge, Optionor is not a party to any unpaid contract for any improvements to or installations on the Option Property, and the Option Property is not affected by any mechanic's or materialmen's liens arising from any labor or materials for the Option Property.

10.7. **No Other Property Contracts.** Except for this Agreement, Optionor is not a party to any Existing Property Contract that would be binding on Optionee after the Closing Date.

10.8. **Pending or Threatened Litigation.** Optionor has no actual knowledge of any pending or threatened litigation, governmental investigation, administrative proceeding, condemnation or sale in lieu thereof, or written notice of any violations of any zoning, building code, fire safety, or health codes or regulations with respect to any portion of the Option Property that remain uncured. Optionor's "actual knowledge" as used in this Agreement means the actual knowledge of Darin Polsley ("**Optionor's Representative**") after reasonable inquiry. Optionor's Representative is the employee of PG&E who currently has management responsibility for the Option Property.

## 11. EVENTS OF DEFAULT.

11.1. **PG&E Default.** The occurrence of any of the following will be an event of default by PG&E (each, a "**PG&E Default**"):

- (a) PG&E sells the Option Property to a third party in violation of *Article 9*.
- (b) PG&E fails to deliver executed counterparts of the Purchase Agreement when required under *Section 3.2*, which failure continues for more than 30 days after demand by City is delivered in accordance with *Section 12.1*.
- (c) PG&E objects to or attempts to block City's assignment of the Option as permitted under *Article 6*, and PG&E's actions continue after notice from City is delivered in accordance with *Section 12.1*.
- (d) PG&E fails to make commercially reasonable efforts to obtain CPUC Approval in accordance with *Article 4* and its failure continues for more than 30 days after demand by City is delivered in accordance with *Section 12.1*.
- (e) PG&E fails to make commercially reasonable efforts to relocate its operations from the Option Property to another site in violation of *Article 8* and its failure continues for more than 30 days after demand by City is delivered in accordance with *Section 12.1*.
- (f) PG&E or its Agents or invitees cause a release of Hazardous Materials in, on, or under the Option Property or the Paper Street at any time between the Effective

Date and the Expiration Date and fail to remediate the condition to the standards set forth in the SMP.

(g) PG&E violates any of the restrictions on use specified in *Article 7* and PG&E fails to initiate a cure of the violation and complete the cure within a reasonable time after notice from City is delivered in accordance with *Section 12.1*.

(h) PG&E fails to remove any title encumbrances in violation of *Section 18.1* and PG&E fails to initiate a cure of the violation and complete the cure within a reasonable time after notice from City is delivered in accordance with *Section 12.1*.

(i) A representation or warranty made by PG&E in *Article 10* is discovered to be untrue during the term of this Agreement.

#### 11.2. *Remedies for PG&E Defaults and Other Breaches.*

(a) Remedy for Wrongful Sale. If the performance of this Agreement is made impossible because of a PG&E Default under *Section 11.1(a)*, this Agreement will terminate automatically. Upon termination, City will be entitled, as its exclusive remedy under this Agreement, to a termination fee in an amount equal to 1.5 times the difference between the Purchase Price under *Article 5* and the purchase price of the sale violating this Agreement (the "**Enhanced Termination Fee**"), plus costs of suit and collection should PG&E fail to pay the full sum to City within 30 days after City's demand delivered in accordance with *Section 12.1*. PG&E's payment of the Enhanced Termination Fee will be deemed a release of PG&E liability for any consequential, incidental, punitive, or other damages for a PG&E Default under *Section 11.1(a)*.

(b) Choice of Remedies for Impeding Option. Following a PG&E Default under one or more of *Sections 11.1(b)*, *11.1(c)*, *11.1(d)*, *11.1(e)*, and *11.1(f)*, City may elect one of the following exclusive remedies:

(i) City may elect to sue PG&E for specific performance of this Agreement, plus Attorneys' Fees and Costs and costs of collection as its exclusive remedy at law or in equity and without any right to consequential, incidental, punitive, or other damages; or

(ii) City may elect to terminate this Agreement on notice delivered to PG&E in accordance with *Section 12.1* within 30 days after the occurrence of the PG&E Default. Upon termination, City will be entitled, as its exclusive remedy under this Agreement, to a termination fee in the amount of \$3 million (the "**Termination Fee**"), plus Attorneys' Fees and Costs and costs of collection should PG&E fail to pay the full sum to City within 30 days after City's demand delivered in accordance with *Section 12.1*. PG&E's payment of the Termination Fee will release PG&E from liability for any consequential, incidental, punitive, or other damages for a PG&E Default under one or more of *Sections 11.1(b)*, *11.1(c)*, *11.1(d)*, *11.1(e)*, and *11.1(f)*.

(c) Remedies for Other PG&E Defaults. Following a PG&E Default under one or more of *Sections 11.1(g), 11.1(h), and 11.1(i)*, City may elect one of the following exclusive remedies:

(i) City may elect to waive the PG&E Default, in which case this Agreement will continue in full force and effect, and City will be entitled to credit any costs incurred to cure a PG&E Default under *Section 11.1(h)* against the Purchase Price; or

(ii) City may elect to terminate this Agreement upon notice to PG&E delivered in accordance with *Section 12.1* within 30 days after the occurrence of the PG&E Default. Upon termination, City will be entitled, as its exclusive remedy under this Agreement, to a penalty of \$200,000, plus Attorneys' Fees and Costs and costs of collection should PG&E fail to pay the full sum to City within 30 days after City's demand delivered in accordance with *Section 12.1*. PG&E's payment of the penalty will release PG&E from liability for any consequential, incidental, punitive, or other damages for any PG&E Default under one or more of *Sections 11.1(g), 11.1(h), and 11.1(i)*.

11.3. *Acknowledgement.*

THE PARTIES ACKNOWLEDGE AND AGREE THAT CITY'S ACTUAL DAMAGES FOR THE PG&E DEFAULTS AND BREACHES DESCRIBED IN SECTION 11.1 WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. BY PLACING HIS OR HER INITIALS BELOW, AN AUTHORIZED REPRESENTATIVE OF EACH PARTY ACKNOWLEDGES THAT THE PARTIES HAVE AGREED, AFTER NEGOTIATION, ON THE AMOUNTS OF THE ENHANCED TERMINATION FEE SET FORTH IN SECTION 11.2(a), THE TERMINATION FEE SET FORTH IN SECTION 11.2(b)(ii), AND THE PENALTY SET FORTH IN SECTION 11.2(c)(ii) AS REASONABLE ESTIMATES OF CITY'S DAMAGES AS CITY'S EXCLUSIVE REMEDIES AT LAW OR IN EQUITY FOR THOSE SPECIFIC BREACHES AND PG&E DEFAULTS.

Initials: PG&E \_\_\_\_\_ City \_\_\_\_\_

12. NOTICES.

12.1. *Manner of Delivery.* Any notice, including the Exercise Notice, and any consent, approval, or demand required or permitted to be given under this Agreement must be in writing

and delivered by hand or sent by a reliable overnight courier service, with charges prepaid for next business day delivery. The date of any notice will be the date of: (a) receipt; or (b) rejection or other refusal to accept delivery; or (c) the inability to deliver because of a change in address for which no notice was given.

12.2. *Addresses for Notice.* Notices must be delivered to the addresses below. Either Party may change its address for notice by delivering no less than 5 days' notice of its new address to the other Party in the manner specified in this Section.

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: Hoedown Yard

With a copy to: Office of City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attention: Real Estate Finance  
Re: Hoedown Yard

PG&E: If by mail:  
  
Corporate Real Estate Transactions Department  
Pacific Gas and Electric Company  
P.O. Box 770000, Mail Code N15G  
San Francisco, CA 94177

With a concurrent copy to:

Law Department  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120  
Attn: Senior Director and Lead Counsel,  
Corporate and Commercial Group (Real Estate)

If by personal delivery or courier service:

Corporate Real Estate Transactions Department  
Pacific Gas and Electric Company  
245 Market Street, Room 1550  
San Francisco, CA 94105

With a concurrent copy to:

Law Department  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B30A  
San Francisco, CA 94105  
Attn: Senior Director and Lead Counsel,  
Corporate and Commercial Group (Real Estate)

### 13. **BROKERS AND FINDERS.**

Neither Party has had any contact or dealings regarding the Option Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Option or the purchase and sale transaction. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes his or her claim will be responsible for the commission or fee and will indemnify and hold harmless the other Party from all claims, costs, and expenses (including reasonable Attorneys' Fees and Costs) incurred by the indemnified party in defending against the same. The provisions of this Section will survive the Expiration Date.

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

#### 14.1. *Time of Performance.*

(a) Expiration. All performance dates expire at 5:00 p.m., Pacific Standard or Daylight Savings Time, as applicable.

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday, or holiday observed by City is deemed extended to the next week day ("**Business Day**").

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days will be calendar days, and not Business Days, unless otherwise specified in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite date for performance is specified.

#### 14.2. *Interpretation of Agreement.*

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All exhibits are incorporated in this Agreement by reference.

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Agreement unless otherwise specified. The captions preceding the articles and

sections of this Agreement and in the table of contents have been inserted for convenience of reference only and do not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including," "such as," or words of similar import when following any general or specific term, statement, or matter will not be construed to limit the term, statement, or matter to the stated terms, statements, or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation," are used. Rather, the stated term, statement, or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter.

(d) Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party will be considered the drafter of this Agreement, and no presumption or rule that an ambiguity will be construed against the Party drafting the clause (including California Civil Code § 1654) will apply to the interpretation or enforcement of this Agreement.

(e) Costs. Unless specified otherwise, the Party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs incurred in the performance of the obligation.

(f) Agreement References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein," "hereof," or words of similar import, the reference will be deemed to refer to all reasonably related provisions of this Agreement in the context of the reference, unless the reference refers solely to a specific numbered or lettered provision of this Agreement.

(g) Approvals. Each Party's approval or consent under this Agreement must be in writing and, unless specified otherwise, may not be unreasonably withheld, conditioned, or delayed. Unless otherwise specified, a Party's failure to give an approval or consent within any specified time frame will not be deemed to be the Party's approval or consent.

14.3. ***Successors and Assigns***. This Agreement is binding upon and will inure to the benefit of the successors and, subject to the provisions of **Article 6**, the permitted assigns of Optionee and Optionor. Whenever the term "Optionor" or "Optionee" is used in this Agreement, it means that Party's successors and permitted assigns.

14.4. ***No Third Party Beneficiaries***. This Agreement is made and entered into for the sole benefit of the Parties and their successors and permitted assigns. No other person will have or acquire any right or action under this Agreement.

14.5. ***Counterparts***. This Agreement may be executed in counterparts, each of which, together with all other counterparts, will be deemed to be an original.

14.6. **Entire Agreement.** This Agreement (including the exhibits) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parol evidence or any prior draft of this Agreement or of any other agreement will be permitted to contradict or vary the terms of this Agreement.

14.7. **Amendment.**

(a) **Generally.** Neither this Agreement nor any of its terms may be terminated, amended, or modified, except by a written instrument executed by the Parties.

(b) **Further Assurances.** The Parties agree to execute and, if necessary, acknowledge any other documents they agree are necessary or reasonably required to express the intent of the Parties or otherwise effectuate this Agreement.

(c) **Correction of Technical Errors.** If by reason of inadvertence and contrary to the intention of Optionor and Optionee, errors are made in this Agreement or refinements need to be made in the identification or characterization of any title exception, in a legal description, or the reference to or within any exhibit or attachment with respect to a legal description, in the boundaries of any parcel (provided adjustments are relatively minor and do not result in a material change as determined by the City Attorney), in any map or drawing that is an exhibit, Optionor and Optionee may agree to refine or correct the error by a memorandum. Upon execution by both Parties, the memorandum will replace the appropriate provision, but will not be deemed a substantive amendment of this Agreement.

14.8. **Governing Law and Jurisdiction.** This Agreement is governed by, and will be construed and interpreted in accordance with, the laws of the State of California. Optionee and Optionor each irrevocably consents to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

14.9. **Recordation.** Either Party, at its expense, may record a memorandum of this Agreement (the "**Memorandum**") in the form of **Exhibit B** against the Option Property in the Official Records on or after the Effective Date. If a Memorandum is recorded and Optionee fails to timely exercise the Option or this Agreement otherwise terminates, then Optionee agrees, within 30 days after request by Optionor, to execute and deliver to Optionor a quitclaim deed in recordable form, extinguishing the Memorandum as an encumbrance on title to the Option Property.

14.10. **No Implied Waiver.**

(a) Unless otherwise specified, no failure by Optionee to insist upon the strict performance of any obligation of Optionor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which the failure continues, or to exercise any right or power of Optionee under this Agreement, will constitute a waiver of the breach, of Optionee's rights to demand strict compliance with the term, covenant or condition, or of Optionee's right or power.



Optionee's consent to or approval of any act by Optionor requiring Optionee's consent or approval will not be deemed to waive or render unnecessary Optionee's consent to or approval of any subsequent act by Optionor. Any waiver by Optionee of any default must be in writing and will not be a waiver of any other default (including any future default) concerning the same or any other provision of this Agreement.

(b) Unless otherwise specified, no failure by Optionor to insist upon the strict performance of any obligation of Optionee under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which the failure continues, or to exercise any right or power of Optionor under this Agreement, will constitute a waiver of the breach, of Optionor's rights to demand strict compliance with the term, covenant or condition, or of Optionor's right or power. Optionee's consent to or approval of any act by Optionee requiring Optionor's consent or approval will not be deemed to waive or render unnecessary Optionor's consent to or approval of any subsequent act by Optionee. Any waiver by Optionor of any default must be in writing and will not be a waiver of any other default (including any future default) concerning the same or any other provision of this Agreement.

#### 14.11. *Attorneys' Fees.*

(a) If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' fees and costs, and all court costs and other costs of the prevailing Party incurred in connection with the prosecution or defense of such action or in enforcing or establishing its rights under this Agreement (collectively, "**Attorneys' Fees and Costs**"). The term "**Attorneys' Fees and Costs**" includes all fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, whether or not any action is brought with respect to the matter for which the fees were incurred and the costs and expenses of counsel to the Parties, that may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney. Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement will be recoverable separately from and in addition to any other amount included in the judgment, and the Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any judgment.

(b) For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. Similarly, for purposes of this Agreement, the reasonable fees of PG&E's in-house attorneys will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of

the law for which the PG&E's in-house attorney's services were rendered who practice in San Francisco law firms with approximately the same number of attorneys as employed by PG&E's Law Department.

14.12. **Relationship of the Parties.** Optionee is not, and none of the provisions in this Agreement may be deemed to render Optionee, a partner in Optionor's business or joint venturer or member in any joint enterprise with Optionor. Neither Party may act as the agent of the other Party. This Agreement is not intended nor may it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

14.13. **Severability.** If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of the provision will not affect any other provision of this Agreement or the application of the provision to any other Person or circumstance, and the remaining portions of this Agreement will continue in full force and effect, unless enforcement of this Agreement as so modified would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

14.14. **Cumulative Remedies.** All rights and remedies of either Party under this Agreement will be cumulative, unless provided otherwise.

14.15. **Survival of Indemnities.** Termination or expiration of this Agreement will not affect the right of either Party to enforce any indemnities under this Agreement, the ability to collect any sums due, or any other provision of this Agreement that expressly survives its termination or expiration.

14.16. **Sunshine Ordinance.** Optionor understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the California Public Records Act (Gov. Code §§ 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to City will be public records subject to public disclosure, and to the extent required by applicable laws, that City may disclose any records, information, and materials it receives in connection with this Agreement.

14.17. **Conflicts of Interest.** Optionor's Representative acknowledges that he or she is familiar with Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that as of the Effective Date, he or she does not know of any facts that would constitute a violation of any of those provisions, and agrees that if Optionor's Representative becomes aware of any such fact during the term of this Agreement, he or she will promptly notify City.

14.18. **Notification of Limitations on Contributions.** By executing this Agreement, Optionor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City to sell or lease any land or building to or from City whenever the transaction would require the approval by a city elective officer, the board on which that city elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to: (1) the applicable

city elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for the contract or six months after the date the contract is approved. Optionor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Optionor further acknowledges that the prohibition on contributions applies to each Optionor; each member of Optionor's board of directors; and Optionor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20% in Optionor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Optionor. Additionally, Optionor acknowledges that Optionor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Optionor further agrees to provide to City the names of each person, entity, or committee described above upon request.

14.19. *Non-Liability of City Officials, Employees and Agents.* Nothing in this Agreement will cause any elective or appointive board, commission, member, officer, employee, or agent of City to be personally liable to Optionor, its successors and assigns, in the event of any default or breach by Optionee or for any amount which may become due to Optionor, its successors and assigns, or for any obligation of Optionee under this Agreement. Similarly, nothing in this Agreement will cause any officer, director, employee or agent of Optionor, including Optionor's Representative, to be personally liable to Optionee, its successors and assigns, in the event of any default or breach by Optionor or for any amount which may become due to Optionee, its successors and assigns, or for any obligation of Optionor under this Agreement.

## 15. DEFINITIONS.

"Accepted Conditions of Title" is defined in Section 18.1(b).

"Agents," when used with respect to Optionor, includes its agents, employees, officers, contractors, and representatives. "Agents," when used with respect to City, includes City and any Assignee or potential Assignee and their respective agents, employees, officers, contractors and representatives.

"Agreement" is defined in the preamble.

"Assignee" means the Person acquiring all of City's interest in and rights under this Agreement pursuant to the Assignment and Assumption Agreement.

"Assignment and Assumption Agreement" is defined in Article 6.

"Attorneys' Fees and Costs" is defined in Section 14.11.

"Board" is defined in Recital F.

"Business Day" is defined in Section 14.1(b).









"**Cable Project**" is defined in Recital A.

"**City**" is defined in the preamble.

"**Closing Date**" is defined in Section 3.1(b).

"**CPUC**" is defined in Recital H.

"**CPUC Approval**" is defined in Section 4.2.

"**Deed Restriction**" is defined in Recital D.

"**Effective Date**" is defined in Article 2.

"**Enhanced Termination Fee**" is defined in Section 11.2(a).

"**Exercise Notice**" is defined in Section 3.1(a).

"**Existing Property Contracts**" is defined in Section 7.4(b).

"**Expiration Date**" is defined in Article 2.

"**Grant Deed**" means

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any regulatory agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos-containing materials, and presumed asbestos-containing materials (as defined in Cal-OSHA General Industry Safety Order for Asbestos), whether or not part of the structure of any existing improvements on the Option Property, any improvements to be constructed on the Option Property by or on behalf of Optionor, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever.

"**Indemnification**" and "**indemnity**" have correlating meanings.

"**License**" is defined in Recital B.

"**Mayor**" means the Mayor of City and County of San Francisco.

"**Memorandum**" is defined in Section 14.9.

"**New Property Contract**" is defined in Section 7.4(a).

"**New Title Exception**" is defined in Section 18.2(b).

"**Official Records**" is defined in Recital D.



"**Option**" is defined in Recital E.

"**Option Exercise Period**" is defined in Section 3.1(a).

"**Option Property**" is defined in Recital C.

"**Optionee**" is defined in the preamble.

"**Optionor**" is defined in the preamble.

"**Optionor's actual knowledge**" is defined in Section 10.7.

"**Optionor's Representative**" is defined in Section 10.7.

"**Paper Street**" is defined in Recital C.

"**Party**" is defined in the preamble.

"**Person**" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

"**PG&E**" is defined in the preamble.

"**PG&E Default**" is defined in Section 11.1.

"**Port**" and "**Port Commission**" are defined in Recital B.

"**Preliminary Report**" is defined in Section 18.1(a).

"**Purchase Agreement**" is defined in Section 3.1(a).

"**Purchase Price**" is defined in Article 5.

"**Release and Indemnity Agreement**" is defined in Section 7.7.

"**Relocation Notice**" is defined in Section 4.3(b).

"**SMP**" is defined in Recital D.

"**Square Footage Rate**" is defined in Article 5.

"**SUD**" is defined in Recital G.

"**Term Sheet**" is defined in Recital F.

"**Termination Fee**" is defined in Section 11.2(b).

"**Title Company**" is defined in Section 18.1(a).

"**Transfer**" is defined in Article 6.

"Water Board" is defined in Recital D.

"ZA-1 Line" is defined in Recital A.

## 16. REQUIRED LEGISLATION.

PG&E acknowledges and agrees that no officer or employee of City has authority to commit City to the Purchase and Sale Agreement or the purchase of the Option Property contemplated by this Agreement unless the Board of Supervisors finally passes appropriate legislation approving the Purchase and Sale Agreement and the purchase of the Option Property. Therefore, any obligations or liabilities of City under the attached form of Purchase and Sale Agreement are contingent upon legislation, and purchase of the Option Property contemplated by this Agreement cannot be executed if the Board of Supervisors does not approve the Purchase and Sale Agreement and the purchase of the Option Property, in its sole discretion. No city department, commission, or agency approval may legally bind City to the Purchase and Sale Agreement or the purchase of the Option Property or be deemed to imply that authorizing legislation will be enacted.

## 17. INSPECTION OF PROPERTY.

### 17.1. *Entry; Invasive Testing.*

(a) Optionee, including any potential Assignee and their respective Agents, may enter onto the Option Property at reasonable times and from time to time to inspect the Option Property. Entry will be allowed under the terms of a commercially reasonable license agreement between Optionee and PG&E that will be conditioned on compliance with the SMP and indemnity and insurance provisions protecting PG&E from claims arising from permitted entries onto the Option Property. At Optionee's request, PG&E will extend the term of the license agreement or grant Optionee a new license agreement on the same terms to permit Optionee to conduct its inspection of the Option Property.

(b) Optionee may not conduct invasive testing, including soil or groundwater sampling, on the Option Property until PG&E reasonably consents to and, if necessary, the Water Board approves a work plan that describes in detail the nature, scope, location and purpose of all of its proposed activities to be performed on the Option Property, including methods and procedures for restoration of any alteration to Option Property, and a health and safety plan. Without limiting its right to comment on any work plan submitted to the Water Board for approval, PG&E agrees that it would be unreasonable for PG&E to object to a work plan that the Water Board has approved and that otherwise complies with the SMP.

17.2. *Discovery of New Information.* If City or any Assignee or potential Assignee discovers new information relating to the environmental condition of the Option Property, the Person making the discovery shall promptly disclose the new information to PG&E, the City, the Water Board and any other regulatory agency or court of competent jurisdiction, and follow the Water Board's or other agency's, or a court of law's or an administrative court's direction on whether further investigation, remediation, monitoring, or other measures will be imposed by order or through amendments to the Deed Restriction. PG&E, the City, and any potential

Assignee or future owner will have the right to submit comments to the Water Board, other agency or court of competent jurisdiction for consideration in its deliberations.

## 18. TITLE REVIEW.

18.1. *Obligation to Remove Certain Title Encumbrances.* PG&E agrees, at PG&E's expense, to remove as liens on the Option Property, at or prior to the Closing Date: (a) all delinquent real estate taxes; (b) all delinquent bonds and delinquent special assessments, including interest and penalties thereon; (c) all mortgages or deeds of trust; and (d) all judgment and mechanics' liens. Mechanics' liens and similar liens may be removed by payment, bonding, or endorsement.

### 18.2. *Preliminary Report.*

(a) Within 30 days after request by Optionee, PG&E will cause Chicago Title Insurance Company ("**Title Company**") to deliver to Optionee a current preliminary report on the Property issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "**Preliminary Report**").

(b) Optionee will advise PG&E within 90 days after receipt of the Preliminary Report which exceptions to title, if any, Optionee is willing to accept (the "**Accepted Conditions of Title**"). PG&E will have 30 days after receipt of Optionee's notice of any objections to title to give Optionee:

(i) notice that all objectionable exceptions have been removed from title or will be removed or cured on or before the Closing Date; or

(ii) notice that PG&E elects not to cause the objectionable exceptions to be removed.

(c) If PG&E gives notice under *Section 18.2(b)(ii)*, Optionee will have 30 days to either waive the exceptions or terminate this Agreement. If any of the objectionable exceptions is a title encumbrance described in *Section 18.1*, the following will apply:

(i) if Optionee elects to terminate this Agreement, Optionee will be entitled to the Termination Fee described in *Section 11.2(c)(ii)*; and

(ii) if Optionee elects to waive the title exceptions, Optionee will be entitled to offset any costs it incurs to cure the exceptions against the Purchase Price.

### 18.3. *Updated Title Report.*

(a) From time to time during the term of this Agreement, Optionee may request updates to the Preliminary Report.

(b) If any update to the Preliminary Report discloses additional liens, encumbrances, or other title exceptions (each, a "New Title Exception") that were not disclosed in the Preliminary Report, Optionee will advise PG&E within 30 days after receipt of notice of the New Title Exception whether Optionee approves or disapproves of the New Title Exception. If Optionee approves the New Title Exception, such New Title Exception will be deemed to be an Accepted Condition of Title. PG&E will have 30 days after receipt of Optionee's notice of objection to any New Title Exception to give Optionee:

(i) notice that the New Title Exception objected to by Optionee has been removed from title or will be removed or cured on or before the Closing Date; or

(ii) notice that PG&E elects not to cause the New Title Exception to be removed.

(c) If PG&E gives notice under *Section 18.2(b)(ii)*, Optionee will have 30 days to accept the objectionable New Title Exception or terminate this Agreement. If Optionee accepts the New Title Exception, such New Title Exception will be deemed an Accepted Condition of Title, and Optionee will be entitled to offset all of Optionee's costs to remove any title encumbrance described in *Section 18.1* against the Purchase Price. If any of the objectionable exceptions is a title encumbrance described in *Section 18.1*, and Optionee elects to terminate this Agreement, Optionee will be entitled to the Termination Fee described in *Section 11.2(c)(ii)*.

Executed as of the last date written below.

**PG&E:**

**PACIFIC GAS AND ELECTRIC COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

Name: \_\_\_\_\_

Board of Supervisors Resolution No.

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## EXHIBIT A

### REAL PROPERTY DESCRIPTION

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

#### PARCEL ONE:

BEGINNING AT A POINT ON THE WESTERLY LINE OF MICHIGAN STREET DISTANT THEREON 150 FEET NORTHERLY FROM THE NORTHWESTERLY CORNER OF MICHIGAN AND TWENTY-SECOND STREETS; AND RUNNING THENCE NORTHERLY ALONG SAID LINE OF MICHIGAN STREET 179 FEET; THENCE AT A RIGHT ANGLE WESTERLY 78.24 FEET; THENCE SOUTHWESTERLY 4 FEET, MORE OR LESS, TO A POINT WHICH IS DISTANT 120 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 325 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 20 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 6 FEET; THENCE SOUTHWESTERLY 51 FEET AND 4 INCHES, MORE OR LESS, TO A POINT WHICH IS DISTANT 95 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO AND DISTANT 200 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 95 FEET TO THE EASTERLY LINE OF ILLINOIS STREET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF ILLINOIS STREET 15 FEET; THENCE AT A RIGHT ANGLE EASTERLY 87 FEET AND 6 INCHES; THENCE SOUTHWESTERLY 36 FEET, MORE OR LESS, TO A POINT WHICH IS DISTANT 117 FEET AND 7 INCHES WESTERLY FROM THE WESTERLY LINE OF MICHIGAN STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 150 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; AND THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 117 FEET AND 7 INCHES, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING PART OF POTRERO NUEVO BLOCK NO. 428.

#### PARCEL TWO:

BEGINNING AT A POINT ON THE EASTERLY LINE OF ILLINOIS STREET, DISTANT THEREON 200 FEET NORTHERLY FROM THE NORTHEASTERLY CORNER OF ILLINOIS AND TWENTY-SECOND STREETS; AND RUNNING THENCE NORTHERLY ALONG SAID LINE OF ILLINOIS STREET 129 FEET; THENCE AT A RIGHT ANGLE EASTERLY 121.76 FEET; THENCE SOUTHWESTERLY 4 FEET, MORE OR LESS, TO A POINT WHICH IS DISTANT 120 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO AND DISTANT 325

FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 20 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 6 FEET; THENCE SOUTHWESTERLY 51 FEET AND 4 INCHES, MORE OR LESS, TO A POINT WHICH IS DISTANT 95 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 200 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; AND THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 95 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 428.

PARCEL THREE:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF TWENTY-SECOND STREET DISTANT THEREON 97.84 FEET EASTERLY FROM THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF TWENTY-SECOND STREET WITH THE EASTERLY LINE OF ILLINOIS STREET AND RUNNING THENCE EASTERLY ALONG SAID LINE OF TWENTY-SECOND STREET 102.16 FEET TO THE WESTERLY LINE OF MICHIGAN STREET; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF MICHIGAN STREET 150.0 FEET; THENCE AT A RIGHT ANGLE WESTERLY 117.583; THENCE NORTHEASTERLY 36 FEET, MORE OR LESS, TO A POINT DISTANT 87.5 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 185.0 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT A RIGHT ANGLE THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 87.5 FEET TO A POINT IN THE EASTERLY LINE OF ILLINOIS STREET; THENCE SOUTHERLY ALONG SAID LINE OF ILLINOIS STREET 87.16 FEET; THENCE AT A RIGHT ANGLE EASTERLY 97.84 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 97.84 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF TWENTY-SECOND STREET AND THE EASTERLY LINE OF ILLINOIS STREET; AND RUNNING THENCE EASTERLY ALONG SAID LINE OF TWENTY-SECOND STREET 97.84 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 97.84 FEET; THENCE AT A RIGHT ANGLE WESTERLY 97.84 FEET TO THE EASTERLY LINE OF ILLINOIS STREET; AND THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF ILLINOIS STREET 97.84 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 428.



PARCEL FIVE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF TWENTY-SECOND STREET AND THE EASTERLY LINE OF MICHIGAN STREET; RUNNING THENCE NORTHERLY AND ALONG SAID EASTERLY LINE OF MICHIGAN STREET 225 FEET AND 6-½ INCHES TO A POINT ON SAID EASTERLY LINE OF MICHIGAN STREET, DISTANT THEREON 640 FEET AND 5-½ INCHES SOUTHERLY FROM THE SOUTHERLY LINE OF TWENTIETH STREET; THENCE AT A RIGHT ANGLE EASTERLY AND PARALLEL WITH SAID SOUTHERLY LINE OF TWENTIETH STREET 100 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 5 FEET AND 6-½ INCHES; THENCE AT A RIGHT ANGLE EASTERLY 140 FEET TO THE FORMER CENTER LINE OF GEORGIA STREET, NOW CLOSED; THENCE AT A RIGHT ANGLE SOUTHERLY AND ALONG SAID CENTER LINE 220 FEET TO THE NORTHERLY LINE OF TWENTY-SECOND STREET PRODUCED EASTERLY; THENCE AT A RIGHT ANGLE WESTERLY ALONG SAID NORTHERLY LINE OF TWENTY-SECOND STREET AND ITS EASTERLY PRODUCTION 240 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 445, AND A PORTION OF GEORGIA STREET, NOW CLOSED.

PARCEL SIX:

BEGINNING AT A POINT ON THE EASTERLY LINE OF MICHIGAN STREET, DISTANT THEREON 640 FEET AND 5½ INCHES SOUTHERLY FROM THE SOUTHERLY LINE OF TWENTIETH STREET, RUNNING THENCE AT A RIGHT ANGLE EASTERLY AND PARALLEL WITH SAID SOUTHERLY LINE OF TWENTIETH STREET 100 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 5 FEET AND 6-½ INCHES; THENCE AT A RIGHT ANGLE EASTERLY 140 FEET TO THE FORMER CENTER LINE OF GEORGIA STREET, NOW CLOSED; THENCE AT A RIGHT ANGLE NORTHERLY 50 FEET; THENCE AT A RIGHT ANGLE WESTERLY 240 FEET TO THE EASTERLY LINE OF MICHIGAN STREET; THENCE SOUTHERLY ALONG SAID LINE OF MICHIGAN STREET 44 FEET AND 5-½ INCHES TO THE POINT OF BEGINNING.

APN(s): Assessor's Lot 008A, Block 4110 and Assessor's Lot 002, Block 4120

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**EXHIBIT B**

**FORM OF MEMORANDUM OF AGREEMENT**

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105).

(Space above this line reserved for Recorder's use only)

**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT ("Memorandum")** dated as of [\_\_\_\_], 2014, is by and between **PACIFIC GAS AND ELECTRIC COMPANY**; a California corporation ("**Optionor**"), and **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**").

1. Optionor is the owner of certain real property located in City and County of San Francisco, California, commonly known as the Hoedown Yard at the corner of 22<sup>nd</sup> and Illinois Streets, more particularly described in *Exhibit A*, which is attached to and incorporated by this reference in this Memorandum of Agreement (the "**Real Property**").

2. Optionor and City have entered into an Option Agreement for the Purchase and Sale of Real Property dated as of \_\_\_\_\_, 2014 (the "**Agreement**"), which is incorporated by reference into this Memorandum, by which Optionor gave City an exclusive and irrevocable option to purchase the Real Property on the terms and conditions set forth in the Agreement.

3. The purpose of this Memorandum is to give notice of the Agreement and the rights and obligations of the parties under the Agreement.

4. This Memorandum does not modify, alter, or amend the Agreement in any way. If any conflict exists between the terms of the Agreement and this Memorandum, the terms of

the Agreement will govern and determine for all purposes the relationship between Optionor and City and their respective rights and duties.

**PG&E:**

**PACIFIC GAS AND ELECTRIC COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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

[Signatures to be acknowledged.]

**EXHIBIT C**

**FORM OF PURCHASE AND SALE AGREEMENT**

(To be attached.)



*JUNE 24, 2014 for Board of Supervisors file*

**FORM OF  
AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**

by and between

**PACIFIC GAS AND ELECTRIC COMPANY,**  
a California corporation,  
as Seller

and

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation,  
as Buyer

For the purchase and sale of

Hoedown Yard, located at 22nd Street and Illinois Street,

San Francisco, California

[DATE]

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EXHIBIT C	Form of Certificate of Transferor Other Than An Individual (FIRPTA Affidavit)
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EXHIBIT E	Approved Site Management Plan
EXHIBIT F	Covenant and Environmental Restriction on Property
EXHIBIT G	List of Documents Delivered by Seller
EXHIBIT H	Form of Assignment and Assumption Agreement
EXHIBIT I	Environmental Risk Management Measures
EXHIBIT J	Natural Hazards Report
EXHIBIT K	Form of Release and Indemnity Agreement

## FORM OF

### AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

(Assessor's Block 4110, Lot 008A & Block 4120, Lot 002, San Francisco)

This **AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE** (this "**Agreement**"), dated for reference purposes only as of \_\_\_\_\_, 20\_\_ (the "**Reference Date**") is by and between **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation ("**Seller**" or "**PG&E**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), acting by and through the Real Estate Division of its General Services Agency (the "**Department**") (Seller and Buyer, each a "**Party**"). Capitalized and other defined terms used in this Agreement have the meanings given to them, or are defined where indicated, in *Article 13* [Definitions].

#### 1. PURCHASE AND SALE.

##### 1.1 Relation to Option Agreement.

This Agreement is made in connection with the Option Agreement for the Purchase and Sale of Real Property between PG&E and City, dated for reference purposes as of [date] (the "**Option Agreement**"), and is subject to: (i) rescission by City as set forth in Section 3.4 of the Option Agreement; and (ii) City's right to Transfer its rights and obligations under the Option Agreement to an Assignee under an Assignment and Assumption Agreement as defined and described in Article 6 of the Option Agreement and in the form attached as *Exhibit H*.

##### 1.2 Property to be Purchased and Sold.

In accordance with the Option Agreement, Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants, and conditions set forth in this Agreement, the "**Property**" consisting collectively of the following:

(a) the real property consisting of approximately 130,720 square feet of land, located in the City and County of San Francisco ("**San Francisco**"), commonly known as the Hoedown Yard, and more particularly described in *Exhibit A* (the "**Land**");

(b) all buildings and improvements then existing on the Land (collectively, the "**Improvements**"); and

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights, and water stock relating to the Land, and any and all easements, rights-of-way, or other appurtenances used in connection with the beneficial use and enjoyment of the Land, and any and all of Seller's right, title, and interest in and to all roads and alleys adjoining or servicing the Land (collectively, the "**Appurtenances**").

### 1.3 Identity of Buyer; Effective Date.

ALTERNATIVE 1: Consistent with Board Resolution Nos. 54-14 and XX, the Department has obtained San Francisco Board of Supervisors approval to enter into this Agreement and to purchase the Property on behalf of [name of purchasing department] by Resolution No. XX. [Purchasing department] proposes to use the Property for [describe public use] and has identified a source of funds to pay the Purchase Price. After consultation with the City's Risk Manager, [purchasing department] has negotiated [measures to address potential liability for environmental contamination at the Property]. As used this Agreement, "**Buyer**" means City, and the "**Effective Date**" of this Agreement is the date on which the following have occurred: (i) City's Board of Supervisors has finally enacted a resolution authorizing the Director of Real Estate to execute this Agreement and implement the transactions contemplated by this Agreement; and (ii) both Parties have executed this Agreement.

ALTERNATIVE 2: Consistent with Board Resolution Nos. 54-14 and XX, the Department has conducted a [competitive auction or other competitive process] and identified [Name], a qualified buyer to which City has assigned all of its rights and obligations under the Option Agreement under the Assignment and Assumption Agreement. Accordingly: (i) all waivers, releases, and other limitations on the rights of Buyer in this Agreement are binding on [Name]; (ii) as used, in this Agreement, "**City**" and "**Buyer**" in this Agreement mean [Name], except in reference to City's prior actions and its regulatory capacity over property and Persons in San Francisco; and (iii) the "**Effective Date**" means the date on which both Parties have executed this Agreement.

## 2. PURCHASE PRICE

### 2.1 Purchase Price.

In connection with the Option Agreement, PG&E and City conducted an appraisal process to establish the fair market value of the Property, which they agreed is \$63.37 per square foot (the "**Purchase Rate**"). The purchase price for the Property is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "**Purchase Price**").

### 2.2 Payment.

Through the Escrow established under *Section 2.3* [Funds], City shall purchase the Property by paying the Purchase Price, adjusted as provided in *Article 7* [Expenses and Taxes], and reduced by any credits due to City as a condition precedent to consummating the purchase and sale contemplated by this Agreement (the "**Closing**" or "**Close of Escrow**"). Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under *Sections 6.3(b)* and *6.3(c)* [Seller's Delivery of Documents], City may be required to withhold a portion of the Purchase Price under Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "**Federal Tax Code**"), or Section 18662 of the California Revenue and Taxation Code (the "**State Tax Code**"). Any amount City properly withholds for this purpose will be deemed to have been paid by City as part of the Purchase Price and will not excuse or otherwise affect Seller's obligation to consummate the sale.

### **2.3 Funds.**

All payments made by any Party must be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds to the escrow account ("**Escrow**") held by Title Company (as defined in **Section 3.2** [Title Insurance]), as escrow agent.

## **3. TITLE TO THE PROPERTY**

### **3.1 Conveyance of Title to the Property.**

As a condition precedent to City's obligation to purchase the Property, at the Closing Seller shall convey to City fee simple title to the Property by duly executed and acknowledged grant deed in the form attached as **Exhibit B** (the "**Deed**"), subject to the Accepted Conditions of Title approved by Buyer pursuant to the Option Agreement and **Section 3.4** [Updated Title Report].

### **3.2 Title Insurance.**

Seller's delivery of title in accordance with the preceding Section will be evidenced by the willingness of Chicago Title Insurance Company (the "**Title Company**") to issue to City a standard 2006 ALTA owner's policy of title insurance (the "**Title Policy**") in the amount of the Purchase Price, subject only to the Accepted Conditions of Title.

### **3.3 Obligation to Remove Certain Title Encumbrances.**

At PG&E's expense, PG&E shall remove as liens on the Property, at or prior to the Closing Date: (a) all delinquent real estate taxes; (b) all delinquent bonds and delinquent special assessments, including interest and penalties thereon; (c) all mortgages or deeds of trust; (d) all judgment and mechanics' liens; and (e) all New Title Exceptions which PG&E agrees to remove under **Section 3.4(b)(i)** [Updated Title Report]. Mechanics' liens and similar liens may be removed by payment, bonding, or endorsement.

### **3.4 Updated Title Report.**

(a) From time to time during the term of this Agreement, Buyer may request updates to the Preliminary Report.

(b) If any update to the Preliminary Report discloses additional liens, encumbrances, or other title exceptions (each, a "**New Title Exception**") that were not disclosed in the Preliminary Report, Buyer will advise PG&E within 30 days after receipt of notice of the New Title Exception whether Buyer approves or disapproves of the New Title Exception. If Buyer approves the New Title Exception, such New Title Exception will be deemed to be an Accepted Condition of Title. PG&E will have 30 days after receipt of Buyer's notice of objection to any New Title Exception to give Buyer:

(i) notice that the New Title Exception to which Buyer objected has been removed from title or will be removed or cured on or before the Closing Date; or

(ii) notice that PG&E elects not to cause the New Title Exception to be removed.

(c) If PG&E gives notice under *Section 3.4(b)(ii)* [Updated Title Report], Buyer will have 30 days to accept the objectionable New Title Exception or terminate this Agreement. If Buyer accepts the New Title Exception, such New Title Exception will be deemed an Accepted Condition of Title. If Buyer elects to terminate this Agreement and the New Title Exception is subject to *Section 3.3* [Obligation to Remove Certain Title Encumbrances], Buyer will be entitled to the Termination Fee pursuant to *Section 11.3(c)(ii)* [Buyer's Remedies].

#### 4. BUYER'S DUE DILIGENCE INVESTIGATIONS

##### 4.1 AS IS Condition of Property.

Seller previously granted Buyer a license to enter onto and conduct specified activities at the Property on the terms of a license agreement. At Buyer's request, Seller will extend the term of the license agreement or grant Buyer a new license agreement on the same terms to permit Buyer to conclude its permitted activities before the Closing Date. Buyer acknowledges that Buyer and its Agents have been given the opportunity to investigate the Property or will be given, through the license agreement, the opportunity to conclude its investigation of the Property, including the opportunity to conduct any appraisals, inspections, tests, audits, verifications, inventories, investigations, and other due diligence regarding the economic, environmental, title, legal, and structural, mechanical, electrical, and other physical conditions of the Property as Buyer deems fit, as well as the suitability of the Property for Buyer's intended uses. Buyer is satisfied that the Property is suitable for Buyer's intended use (subject to rezoning and release of certain land use covenants described below) and acknowledges that it is acquiring the Property in its "AS IS" CONDITION, WITH ALL FAULTS. Except as expressly set forth in *Section 9.1* [Representations and Warranties of Seller], neither Seller nor any of its Agents makes or has made any representations or warranties of any kind, express or implied, written or oral, regarding the condition of the Property.

##### 4.2 Receipt of Documents.

Buyer acknowledges receipt of the documents provided by Seller and listed in *Exhibit G* (the "**Documents**"). PG&E makes no representations or warranties regarding the completeness or accuracy of any of the Documents prepared by third parties, and Buyer is not entitled to rely upon such third-party Documents for any purpose.

##### 4.3 Rezoning.

(a) PG&E has consented to the inclusion of the Property in a planned Special Use District for the adjacent Waterfront Site at Pier 70 owned by the Port of San Francisco, or other rezoning effort, on the conditions that:



(i) any rezoning affecting the Property does not take effect until after its sale to Buyer;

(ii) any rezoning affecting the Property is subject to all regulatory restrictions on the Property, including those imposed by the Water Board;

(iii) any modification of the Deed Restriction will not take effect until after the Closing Date;

(iv) in addition to any requirements imposed by the California Regional Water Quality Control Board (the "Water Board"), Buyer has agreed to implement remediation measures in accordance with the requirements outlined in *Exhibit I* entitled "Environmental Risk Management Measures" and a Release and Indemnity Agreement substantially in the form of *Exhibit H* (the "Release and Indemnity Agreement") is recorded against the Property on the Closing Date; and

(v) any rezoning affecting the Property does not impose any out-of-pocket monetary or other obligations on PG&E, encumber the Property, or otherwise have any effect on PG&E or its use of the Property before the Closing Date.

(b) PG&E agrees not to object to Buyer's efforts to rezone the Property through the planned Special Use District for the adjacent Waterfront Site or otherwise as long as Buyer meets the conditions of this Section.

#### 4.4 Financing Districts.

Seller acknowledges that City intends to form and an infrastructure financing district under California Government Code sections 53395 *et seq.* and a community facilities district under the Mello-Roos Community Facilities Act of 1982 (Calif. Gov. Code §§ 53311 *et seq.*), to finance public infrastructure serving Pier 70. Seller agrees, at no out-of-pocket expense to Seller, to reasonably cooperate in taking actions necessary to annex the Property to each of these districts, on condition that no special taxes or other assessments will be assessed against the Property until after the Closing Date.

#### 4.5 Disclosures.

(a) Buyer acknowledges and understands that the Property may be located in an area of San Francisco subject to the requirements of Article 20 of the San Francisco Public Works Code and Article 22A of the San Francisco Health Code, and in accordance with the requirements of Section 22A.15 of the San Francisco Health Code, Buyer acknowledges receipt from Seller of a summary of these ordinances.

(b) Buyer acknowledges that Seller has previously delivered to Buyer a copy of the *Commercial Property Owner's Guide to Earthquake Safety*, published by the State of California Seismic Safety Commission.

#### 4.6 Natural Hazard Disclosures.

(a) Seller is, or may be, required under California law to disclose if the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area designated by the Federal Emergency Management Agency (Gov. Code § 8589.3); (b) an area of potential flooding shown on a dam failure inundation map (Gov. Code § 8589.4); (c) a very high fire hazard severity zone ("**Fire Hazard Severity Zone**") (Gov. Code § 51183.5); (d) a wildland area that may contain substantial forest fire risks and hazards ("**Wildland Fire Zone**") (Pub. Res. Code § 4136); (e) an earthquake fault zone (Pub. Res. Code § 2621.9); or (f) a seismic hazard zone (Pub. Res. Code § 2694). Buyer acknowledges and understands that: (i) if the Property is located in a Fire Hazard Severity Zone, the owner is subject to the maintenance requirements of Government Code section 51182; and (ii) if the Property is located in a Wildland Fire Zone, it is subject to the maintenance requirements of Public Resources Code section 4291, and it is not the State of California's responsibility to provide fire protection services to any building or structure located within a Wildland Fire Zone unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Public Resources Code section 4142. In addition, if the Property is situated in one or more of the hazard zones described above, Buyer's ability to develop the Property, obtain insurance, or receive assistance after a disaster may be limited.

(b) Buyer further acknowledges that the maps on which the natural hazard disclosures are based only estimate where natural hazards exist, and are not definitive indicators of whether or not a property will be affected by a natural disaster. Seller has employed the services of \_\_\_\_\_ (the "**Natural Hazards Expert**") to examine the maps and other information specifically made available to the public by government agencies for the purpose of enabling Seller to fulfill the foregoing disclosure obligations. A copy of the Natural Hazards Disclosure Report ("**Natural Hazards Report**") prepared by the Natural Hazards Expert is attached to this Agreement as *Exhibit J*. Buyer acknowledges that the Natural Hazards Report deals with matters within the scope of the Natural Hazards Expert's professional license or expertise, and Seller will not be liable for any error, inaccuracy, or omission of any information relating to natural hazards disclosures not within its actual knowledge. Seller is making and has made no representations regarding the seismic, geologic, or other natural hazards affecting the Property or their effects on the future use or development of the Property, and Buyer should make its own inquiry and investigation of such hazards.

#### 4.7 Buyer's Release of Seller.

Except for the express representations and warranties of Seller contained in *Section 8.1* [Representations and Warranties of Seller], Buyer, on behalf of itself and its successors and assigns, hereby waives, releases and forever discharges Seller, its officers, directors, employees and agents from any and all claims, demands, suits, liabilities, judgments, causes of action, costs and expenses, including Attorneys' Fees and Costs, whether direct or indirect, known or unknown, foreseen or unforeseen, that Buyer may now have or that may arise in the future on account of or in any way arising out of or connected with the economic, physical, geotechnical,

environmental (including soils and groundwater), title, and legal conditions of the Property, except to the extent provided in this Agreement. By initialing below, an authorized representative of Buyer acknowledges that Buyer is familiar with California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer's Initials: \_\_\_\_\_

Buyer agrees that the release given in this Section covers unknown claims. Accordingly, Buyer waives the benefits of Civil Code section 1542 and any other statute or common law principle of similar effect.

#### 4.8 Survival.

The waivers and releases of Buyer contained in this *Article 4* [Buyer's Due Diligence Investigations] will survive the expiration or earlier termination of this Agreement or the Close of Escrow.

### 5. CONDITIONS PRECEDENT

#### 5.1 Buyer's Conditions to Closing.

Buyer will not be obligated to consummate its purchase of the Property unless the following conditions precedent are satisfied at the Closing Date, except as otherwise specified below or agreed by the Parties (collectively, "**Buyer's Conditions Precedent**"):

- (a) Title Company is prepared to issue the Title Policy.
- (b) PG&E has obtained and complied with all conditions of CPUC Approval (as defined in *Section 5.7* [CPUC Approval]) and any other necessary regulatory approvals to close its facilities on and sell the Property.
- (c) City's Planning Commission and Board of Supervisors have taken actions necessary to rezone the Property after the Closing Date.
- (d) The Water Board has agreed to measures, including a release of the Covenant and Environmental Restriction on Property encumbering the Property, to allow the Property to be rezoned for residential use after the Closing Date.
- (e) ALTERNATIVE 1: The Board of Supervisors, in its sole discretion, has adopted a resolution approving and authorizing [Department] to purchase the Property for the Purchase Price, and the resolution is final and binding on City.

ALTERNATIVE 2: The Board of Supervisors, in its sole discretion, has adopted a resolution approving and authorizing City's assignment of the Option Agreement on terms consistent with City's transfer to [Name], and the resolution is final and binding on City.

(f) Except to the extent that Seller abandoned in place any or all underground conduit and lines with City's consent, Seller has removed any underground utility facilities located in the Property and in the Michigan Street right-of-way bisecting the Property (the "Paper Street").

(g) If PG&E or its Agents or invitees have caused a release of Hazardous Materials in, on, or under the Property or the Paper Street at any time between the Effective Date and the Closing Date, such condition has been remediated to the standards set forth in the SMP.

(h) Subject to *Section 8.3* [Disclosure Defects], Seller is not in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made under this Agreement are true and correct when made and will be true and correct as of the Closing Date.

(i) The following Buyer's Conditions to Closing must be satisfied through Escrow at the Closing.

(i) Seller will deliver to City a certificate certifying that each of Seller's representations and warranties contained in *Section 8.1* [Representations and Warranties of Seller] below are true and correct as of the Closing Date or disclosing facts that make any of Seller's representations and warranties untrue.

(ii) Subject to *Section 9.1* [Risk of Loss], the physical condition of the Property is substantially the same on the Closing Date as it was on the date of Buyer's execution of this Agreement, reasonable wear and tear excepted.

(iii) As of the Closing Date, no litigation or administrative agency or other governmental proceeding is pending or threatened that: (1) would materially adversely affect the value of the Property or the ability of Buyer to operate the Property for its intended use; or (2) could or would cause the change, redesignation, or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property unless initiated by Buyer with Seller's consent.

(iv) Title Company is willing to issue to Buyer at Closing the Title Policy described in *Section 3.2* [Title Insurance].

(v) Seller has delivered the items described in *Section 6.3* [Seller's Delivery of Documents] on or before the Closing.

## **5.2 Failure to Satisfy Buyer's Conditions Precedent.**

(a) Buyer's Conditions Precedent as specified in *Section 5.1* [Buyer's Conditions to Closing] are solely for Buyer's benefit. If any of Buyer's Condition Precedent is not satisfied, Buyer will have the right in its sole discretion to:

(i) waive in writing any Buyer's Condition Precedent except Map Act Compliance (as defined in *Section 5.6* [Subdivision Map Act Compliance]) and CPUC Approval, which may not be waived, and proceed with the purchase;

(ii) terminate this Agreement; or

(iii) extend the Closing Date for a reasonable period of time specified by Buyer, not to exceed 30 days, to allow any Buyer's Conditions Precedent to be satisfied, subject to Buyer's further right to terminate this Agreement upon the expiration of the extended period if all of Buyer's Conditions Precedent still have not been satisfied.

(b) Except as expressly set forth in this Agreement, Buyer's waiver of any Buyer's Condition Precedent will not relieve Seller of any liability or obligation with respect to any breach of its representations or warranties or default in its covenants or agreements in this Agreement. If Buyer has not approved or waived in writing all of Buyer's Conditions Precedent in *Section 5.1* [Buyer's Conditions to Closing] prior to the scheduled Closing Date, then this Agreement will automatically terminate.

## **5.3 Cooperation with Buyer.**

Seller will reasonably cooperate with Buyer with regard to the fulfillment of any of Buyer's Conditions Precedent and completion of its due diligence investigations.

## **5.4 Seller's Conditions to Closing.**

Seller will not be obligated to consummate its sale of the Property unless the following conditions precedent are satisfied at the Closing Date, except as otherwise specified below or agreed by the Parties (collectively, "**Seller's Conditions Precedent**"):

(a) Buyer is not in default in the performance of any material covenant or agreement to be performed by Buyer under this Agreement, and all of Buyer's representations and warranties contained in or made under this Agreement are true and correct when made and will be true and correct as of the Closing Date. At the Closing Buyer will deliver to Seller a certificate certifying that each of Buyer's representations and warranties contained in *Section 8.2* [Representations and Warranties of Buyer] below are true and correct as of the Closing Date or disclosing facts that make any of Buyer's representations and warranties untrue.

(b) Buyer has delivered the items described in *Section 6.4* [Buyer's Delivery of Documents and Funds] on or before the Closing.

#### 5.5 Failure to Satisfy Seller's Conditions Precedent.

(a) Seller's Conditions Precedent contained in *Section 5.4* [Seller's Conditions to Closing] are solely for Seller's benefit. If any Seller's Condition Precedent is not satisfied, Seller will have the right in its sole discretion to:

- (i) waive in writing any Seller's Condition Precedent and proceed with the sale;
- (ii) terminate this Agreement; or
- (iii) extend the Closing Date for a reasonable period of time specified by Seller, not to exceed 30 days, to allow Seller's Conditions Precedent to be satisfied, subject to Seller's further right to terminate this Agreement upon expiration if all Seller's Conditions Precedent still have not been satisfied.

(b) Except as expressly set forth in this Agreement, Seller's waiver of any Seller's Condition Precedent will not relieve City of any liability or obligation with respect to any breach of its representations or warranties or default in its covenants or agreements in this Agreement. If Seller has not approved or waived in writing all of Seller's Conditions Precedent in *Section 5.4* [Seller's Conditions to Closing] prior to the scheduled Closing Date, then this Agreement will automatically terminate.

#### 5.6 Subdivision Map Act Compliance.

At Close of Escrow, the Property must comply with the California Subdivision Map Act ("**Map Act**") (Gov. Code §§ 66410 *et seq.*) ("**Map Act Compliance**"). Certain exemptions to the Map Act may have applied due to Seller's status as a public utility, which exemptions may not apply to Buyer. The obligation of each Party to Close the sale of the Property will be conditioned upon confirming Map Act Compliance or obtaining Map Act Compliance as determined by Seller, in Seller's reasonable business judgment. Buyer, at Buyer's expense, will take all actions necessary to obtain Map Act Compliance to Seller's satisfaction, including obtaining a Certificate of Compliance, or obtaining the approval of and filing of a lot line adjustment, final subdivision map, or parcel map, as applicable. Buyer shall consult with Seller regarding Buyer's proposed means to achieve Map Act Compliance and keep Seller reasonably apprised of the status of Buyer's efforts to achieve Map Act Compliance. Buyer acknowledges and agrees that Seller makes no representation or warranty with respect to Map Act Compliance, and waives all claims against Seller that may arise out of losses, expenses, or damages suffered or incurred by Buyer as a result of the need for Map Act Compliance, or the failure to obtain Map Act Compliance. The condition of Map Act Compliance may not be waived by either Party.

## 5.7 CPUC Approval.

(a) CPUC Approval. Buyer acknowledges that because PG&E is a regulated utility, its sale of the Property may be subject to the prior review and approval of the CPUC ("CPUC Approval") PG&E, in its reasonable business judgment, shall determine whether CPUC Approval is required and provide notice to Buyer promptly after making the determination.

(b) Conditions. If CPUC Approval is required, the following conditions will apply:

(i) PG&E shall file an application to obtain CPUC Approval within 6 months after PG&E has relocated its operations from the Property and exercise reasonable efforts to obtain CPUC Approval. PG&E shall promptly notify City of the date the CPUC application is filed, and upon request by City, PG&E shall advise City of the status of the application.

(ii) CPUC Approval will not be deemed to have occurred for purposes of this Agreement or the Purchase Agreement until CPUC Approval is final, unconditional, and unappealable, including exhaustion of all administrative appeals or remedies before the CPUC. If despite PG&E's reasonable efforts to obtain CPUC Approval, PG&E does not obtain CPUC Approval within 18 months after the date of its application was filed, Buyer may elect to terminate this Agreement upon 30 days' notice to Seller.

(iii) Buyer acknowledges that PG&E will have the right to make reasonable objections to the CPUC's proposed accounting and ratemaking treatment of the sale, which may delay the issuance of CPUC Approval.

(iv) The obligation of each Party to Close the sale of the Property is conditioned on prior CPUC Approval. The Closing Date will be postponed until 90 days after the date CPUC Approval is deemed to have occurred under *Section 5.7(b)(ii)* [CPUC Approval], subject to Buyer's election to terminate this Agreement under *Section 5.7(b)(ii)* [CPUC Approval].

(c) No Warranty. PG&E makes no representation or warranty with respect to the likelihood or timing of CPUC Approval. Except as provided in *Section 11.3(b)* [Impediment to Sale], Buyer waives all claims against PG&E for losses, expenses, or damages suffered or incurred by Buyer as a result of the need for CPUC Approval, any delay in receipt of CPUC Approval, or a decision of the CPUC to disapprove PG&E's sale of the Property if PG&E exercises reasonable efforts to obtain CPUC Approval, if required, and accepts reasonable conditions to CPUC Approval. If the CPUC disapproves PG&E's sale of the Property, PG&E will have no obligation to appeal such determination, and this Agreement will automatically terminate.

## 6. ESCROW AND CLOSING

### 6.1 Opening of Escrow.

On or before the Effective Date, the Parties will open Escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement will serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated by this Agreement. Seller and City agree to execute additional or supplementary instructions as appropriate to enable the escrow holder to comply with this Agreement and Close the transaction, but if any provisions of this Agreement conflict with any additional supplementary instructions, this Agreement will control.

### 6.2 Closing Date.

The Closing will be held and delivery of all items to be made at the Closing under the terms of this Agreement will be made at the offices of Title Company located at \_\_\_\_\_, San Francisco, California \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, or on any earlier date to which City and Seller agree (the "**Closing Date**"), subject to *Article 5* [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date, Title Company shall return to the Party that deposited them all items that have been deposited under this Agreement unless both Parties notify Title Company to the contrary within 5 days after the Closing Date. Title Company's return of deposited items will not, however, limit either Party's rights under this Agreement or relieve either Party of any liability it may have for its wrongful failure to Close.

### 6.3 Seller's Delivery of Documents.

At or before the Closing, Seller will deliver to City, through Escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) a properly executed affidavit under Section 1445(b)(2) of the Federal Tax Code in the form attached as *Exhibit C*, and on which City will be entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (c) a properly executed California Franchise Tax Board Form 593 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662(e) of the State Tax Code;
- (d) resolutions, authorizations, or other documents or agreements relating to Seller that the Title Company may reasonably require to demonstrate Seller's authority to enter into this Agreement and consummate the transactions contemplated by this



Agreement, and proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

(e) copies of the CPUC Approval and any other required regulatory approvals PG&E has obtained in connection with closing its operations at and selling the Property;

(f) a closing statement in form and content satisfactory to Buyer and Seller;

(g) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by *Section 5.1(i)(i)* [Buyer's Conditions to Closing]; and

(h) escrow instructions consistent with this Agreement.

#### **6.4 Buyer's Delivery of Documents and Funds.**

At or before the Closing, Buyer must deliver to Seller through Escrow the following:

(a) if City has not transferred the Option Agreement, an acceptance of the Deed executed by City's Director of Property;

(b) a duly executed and acknowledged Release and Indemnity Agreement;

(c) a closing statement in form and content satisfactory to Buyer and Seller;

(d) the Purchase Price and any additional funds payable by City pursuant to this Agreement;

(e) the duly executed certificate regarding the continued accuracy of City's representations and warranties as required by *Section 5.4(a)* [Seller's Conditions to Closing]; and

(f) escrow instructions consistent with this Agreement.

#### **6.5 Other Documents.**

Seller and Buyer must each deposit any other instruments reasonably required by Title Company as escrow holder or otherwise required to Close the Escrow and consummate the purchase of the Property in accordance with this Agreement, including an agreement (the "**Designation Agreement**") designating Title Company as the "Reporting Person" for the transaction under Section 6045(e) of the Federal Tax Code and related regulations, and executed by Seller, Buyer, and Title Company. The Designation Agreement will be substantially in the form attached as *Exhibit D* and, in any event, must comply with the requirements of Section 6045(e) of the Federal Tax Code and related regulations.

## **7. EXPENSES AND TAXES**

### **7.1 Apportionments.**

(a) Utility charges will be apportioned through escrow as of the Closing Date.

(b) Seller will cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used before the Closing Date. All utility deposits paid by Seller will remain the property of Seller and Buyer will reasonably cooperate to cause utility deposits to which Seller is entitled to be returned to Seller.

### **7.2 Closing Costs.**

(a) Seller will pay the premium for a CLTA form of owner's policy of title insurance, any transfer taxes applicable to the sale, one-half of the Escrow fees, fees and costs of its attorneys and other consultants, and any costs it incurs in connection with the prepayment or satisfaction of any loan, bond, or other indebtedness secured by the Property including any prepayment fees, penalties, or charges.

(b) Buyer will pay one-half of the Escrow fees, all additional costs to obtain the Title Policy, including the cost of the ALTA Survey, and fees and costs of its attorneys and other consultants.

(c) Any other costs and charges of the Escrow not otherwise provided for in this Section or elsewhere in this Agreement will be allocated in accordance with the closing customs for San Francisco, as determined by Title Company.

### **7.3 Real Estate Taxes and Assessments.**

Seller must pay general real estate taxes and assessments ("**Taxes**") payable for the tax year preceding the year of Closing and all prior years at or before the Closing. Taxes payable for the tax year of the Closing will be prorated between Seller and Buyer through Escrow as of the Closing Date.

Buyer expressly acknowledges that Seller, as a regulated public utility, pays Taxes on the Property as assessed by the California State Board of Equalization ("**SBE**") as of January 1 of each year. Once property is so assessed, Seller automatically is obligated to pay Taxes thereon for the subsequent fiscal year commencing the following July 1. If Close of Escrow occurs between January 1 and June 30, Buyer shall deposit into Escrow the full amount to pay Taxes for the tax year beginning on the July 1 immediately following the Close of Escrow, in addition to the prorated amount of Taxes for the current tax year (ending June 30). At Closing, Taxes will be prorated between Seller and Buyer, with Seller responsible for all Taxes allocable to the period before Close of Escrow, and Buyer responsible for all Taxes allocable to the period on and after the Close of Escrow. The Taxes, for pro-ration purposes, will be based on the actual figures for the applicable fiscal year as provided by Seller, unless Escrow is to Close before these figures are available, in which case the pro-ration will be based on the immediately preceding year's figures. The 365-day year will be used for pro-ration purposes. Seller shall pay the Taxes for the subsequent tax year (with Buyer's prorata share paid through Escrow) before they become

delinquent or pay such Taxes in installments if permitted by law. Buyer shall cooperate with Seller and the SBE to complete any documentation necessary to transfer the assessment process out of SBE jurisdiction and terminate the assessment of Taxes by the SBE.

#### **7.4 Post-Closing Reconciliation.**

If any of the prorations or allocations cannot be calculated accurately on the Closing Date, then they will be calculated as soon after the Closing Date as feasible. Either Party owing the other Party a sum of money based on post-Closing calculations must pay the amount due promptly to the other Party.

#### **7.5 Survival.**

The provisions of this *Article 7* [Expenses and Taxes] will survive the Closing.

### **8. REPRESENTATIONS AND WARRANTIES**

#### **8.1 Representations and Warranties of Seller.**

Seller represents and warrants to City as follows:

(a) Seller does not have actual knowledge of any condemnation, either instituted or planned to be instituted, by any governmental or quasi-governmental agency other than City, that could detrimentally affect the use, operation, or value of the Property.

(b) To Seller's actual knowledge, no disputes are pending with regard to the location of any fence or other monument of the Property's boundary or any claims or actions involving the location of any fence or boundary.

(c) To Seller's actual knowledge, no litigation is pending or threatened against Seller that might detrimentally affect the value of the Property or Seller's ability to perform its obligations under this Agreement.

(d) Seller is the legal owner of the Property, with full right to convey title, subject to CPUC Approval, if required, and Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in the Property.

(e) Seller is a corporation duly organized and validly existing, and is in good standing, under the laws of the State of California.

(f) This Agreement and all documents that Seller is to execute and deliver to City at the Closing:

(1) are or at the Closing will be duly authorized, executed, and delivered by Seller;

(2) are or at the Closing will be legal, valid, and binding obligations of Seller; and

(3) do not and at the Closing will not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject, other than CPUC Approval, if required.

(g) To Seller's actual knowledge, Seller has not been suspended or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. If Seller is suspended, disbarred, or prohibited from contracting with any governmental agency at any time before the Closing, it shall immediately notify City of same and the reasons for the action, together with any relevant facts or information requested by City.

(h) No leases or other occupancy agreements will affect the Property at the Closing. No obligations in connection with the Property will be binding upon City after the Closing, except for Accepted Title Exceptions.

(i) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

(j) Seller's "actual knowledge" as used in this Agreement means the actual knowledge of, or receipt of written notice by \_\_\_\_\_, "Seller's Representative," after reasonable inquiry. Seller's Representative is the employee of Seller who currently has management responsibility for the Property.

## 8.2 Representations and Warranties of Buyer.

Buyer represents and warrants to Seller as follows:

(a) If Buyer is an entity, Buyer is duly organized, validly existing, and in good standing under the laws of the state of its organization and is qualified to do business in the state in which the Property is located. The individuals executing this Agreement on behalf of Buyer have the full right and authority to execute this Agreement on behalf of Buyer and to bind Buyer without the consent or approval of any other Person. This Agreement and all documents executed by Buyer that are to be delivered to Seller upon Close of Escrow are, or at the time of Close of Escrow will be: (i) duly authorized, properly executed, and delivered by Buyer; (ii) legal, valid, and binding obligations of Buyer; and (iii) not in violation of any agreement or judicial order to which Buyer is a party or to which it is subject.

(b) Buyer is an experienced real property operator and investor, and is represented by counsel in connection with this transaction. Except for the express representations and warranties of Seller contained in *Section 8.1(a)* [Representations and Warranties of Buyer] and in any documents prepared by Seller and delivered to Buyer in connection with the Option Agreement or this Agreement, Buyer is relying solely upon its own analysis of the Property as it deems necessary or appropriate in acquiring the Property from Seller (including an analysis of any and all matters concerning the physical

or environmental condition, condition of title, use, development, or suitability for development of the Property).

### 8.3 Disclosure Defects.

(a) Except as specified in this Agreement, Seller will bear no liability if, before the Close of Escrow (including during the term of the Option Agreement), Seller discloses to Buyer or Buyer otherwise discovers any of the following (collectively, "Disclosure Defects"):

(i) title to the Property is subject to defects, limitations, or encumbrances other than Accepted Conditions to Title or matters that are disclosed by survey;

(ii) Seller fails to make any material disclosures to Buyer regarding the Property as required by law or this Agreement; and

(iii) any representation or warranty of Seller contained in the Option Agreement or this Agreement is, or as of the Closing Date will be, untrue.

(b) Within 10 days after Seller's disclosure or Buyer's discovery of the existence of a Disclosure Defect, Buyer will give Seller notice in accordance with **Section 12.1** [Notices] of Buyer's objection to the Disclosure Defect. The notice must specify in reasonable detail the reasons for Buyer's objection.

(c) Upon receipt of timely notice of Buyer's objection, Seller may elect by notice to Buyer to take either of the following actions.

(i) Seller may elect to attempt to cure or otherwise remedy Buyer's objection. To effect a cure, Seller may postpone the Close of Escrow for up to 30 days ("**Seller's Cure Period**").

(ii) Seller may elect not to cure or otherwise remedy Buyer's objection.

(d) If Seller is unable or unwilling to cure Buyer's objection within Seller's Cure Period, then Buyer may take either of the following actions.

(i) Buyer may waive the Disclosure Defect and Close the purchase of the Property in accordance with this Agreement.

(ii) Buyer may terminate this Agreement by notice given to Seller within 10 days after the expiration of Seller's Cure Period (if Seller elected to attempt a cure) or 10 day after receipt of Seller's notice of election not to cure the Disclosure Default. Upon termination, Buyer will be entitled to return of any documents and funds Buyer deposited into Escrow, and the Escrow and all rights and obligations under this Agreement will terminate, except for obligations that expressly survive the termination.

(e) If Buyer terminates this Agreement because of a Disclosure Defect, Buyer's sole remedy will be the remedy specified in *Section 11.3(c)(ii)* [Buyer's Remedies].

## **9. CONDEMNATION AND POSSESSION**

### **9.1 Risk of Loss.**

Buyer acknowledges that it intends to demolish the Improvements on the Property after the Close of Escrow. Accordingly, if the Improvements are damaged or destroyed before the Closing Date, Buyer agrees that Seller may elect, in its sole discretion, to reasonably repair the damaged Improvements or to demolish the damaged Improvements. If Seller elects to demolish the damaged Improvements, Seller shall raze the damaged Improvements, remove all debris, and return the affected site to a reasonably neat and clean condition. No damage or destruction to the Improvements will entitle Buyer to terminate this Agreement.

### **9.2 Condemnation.**

If any part of the Property is taken by condemnation, this Agreement will remain in full force and effect as to the remaining portion of the Property, and Seller will be entitled to all condemnation awards.

### **9.3 Possession.**

Possession of the Property will be delivered to City on the Closing Date.

## **10. MAINTENANCE; CONSENT TO NEW CONTRACTS; UNDERGROUND UTILITIES**

### **10.1 Maintenance of the Property by Seller.**

Between the date that Seller executes this Agreement and the Closing, Seller must manage and maintain the Property in a commercially reasonable manner.

### **10.2 No New Contracts Affecting the Property; Termination of Existing Contracts.**

Seller agrees that it will not enter into or amend any lease or contract that would affect the Property after the Effective Date and be binding upon the City after the Closing Date. Seller must terminate before the Closing, at no cost or expense to City, any and all leases and other agreements affecting the Property.

### **10.3 Underground Utilities.**

With City's consent, PG&E may abandon in place any or all underground conduit and lines located in the Paper Street or the Property. To the extent that City has not consented to their abandonment in place, PG&E agrees to remove any underground utility facilities located in the Paper Street or the Property prior to the Closing Date and acknowledges that:

(a) City intends to assemble the Paper Street and the Property for development;

(b) the continued presence of underground utility facilities in the Paper Street or the Property without City's consent could seriously impair the marketability of the assembled parcels to City's material detriment; and

(c) to the extent that City has not consented to their abandonment in place, PG&E's failure to remove any underground utility facilities located in the Paper Street or the Property will be a PG&E Default under *Section 11.2(f)* [Events of Default by Seller] causing City actual harm and entitle City to receive the Termination Fee under *Section 11.3(b)(ii)* [Buyer's Remedies].

## 11. DEFAULTS AND REMEDIES

### 11.1 Non-Performance by Both Parties.

If the Closing cannot occur by the Closing Date because neither Party has fully performed, then the Closing Date will be extended automatically by 30 days, and either Party may instruct the Title Company to return all documents and funds deposited into Escrow to the depositing Party on the 31<sup>st</sup> day after the original Closing Date. If both Parties perform fully within the 30-day extension period, Title Company will Close Escrow.

### 11.2 Events of Default by Seller.

The occurrence of any of the following will be an "Event of Default" under this Agreement by Seller:

(a) Seller transfers ownership in the Property to a third party (other than to an affiliate) while this Agreement is in effect.

(b) Seller's Conditions Precedent have been satisfied or waived by Seller, and Seller fails to make all required deposits into Escrow by the Closing Date, which prevents the Closing, and Seller's failure continues for more than 20 days after notice from Buyer given in accordance with *Section 12.1* [Notices].

(c) PG&E fails to exercise reasonable efforts to obtain CPUC Approval, if required, and Seller's failure continues for more than 30 days after notice from Buyer given in accordance with *Section 12.1* [Notices].

(d) PG&E objects to efforts to modify the Deed Restriction or rezone the Property in violation of *Section 4.3* [Rezoning], and Seller's failure continues for more than 30 days after notice from Buyer given in accordance with *Section 12.1* [Notices].

(e) Buyer, through its acts or omissions, wrongfully prevents a Condition Precedent from being satisfied, and Seller's failure continues for more than 30 days after notice from Buyer given in accordance with *Section 12.1* [Notices].

(f) Except as agreed by Buyer under *Section 10.3* [Underground Utilities], Seller fails to remove any underground utility facilities located in the Property or the Paper Street in violation of *Section 10.3* [Underground Utilities], and Seller's failure continues for 30 days after notice from Buyer given in accordance with *Section 12.1* [Notices].

(g) If PG&E or its Agents or invitees caused a Release of Hazardous Materials in, on, or under the Property or the Paper Street at any time between the Effective Date and the Closing Date and PG&E has failed to cause the condition to be remediated to the standards set forth in the SMP by the Closing Date.

(h) PG&E objects to or fails to reasonably cooperate with efforts to annex the Property to an infrastructure financing district or a community facilities district in violation of *Section 4.4* [Financing Districts], and Seller's failure continues for 30 days after notice from Buyer given in accordance with *Section 12.1* [Notices].

(i) Seller violates any other material covenant or fails to perform any other material obligation to be performed by Seller under this Agreement when performance is due, and the violation or failure continues without cure for more than 30 days after notice from Buyer given in accordance with *Section 12.1* [Notices] and specifying the nature of the violation or failure, or, if the cure cannot reasonably be completed within the 30-day period, if Seller does not begin and complete the cure within a reasonable time as determined by Buyer.

(j) Seller fails to remove any title exception that it agreed or is required to remove under *Section 3.3* [Obligation to Remove Certain Title Encumbrances] by the Closing Date.

### 11.3 Buyer's Remedies.

As material consideration to Seller for entering into this Agreement, Buyer's remedies following an Event of Default by Seller will be limited as set forth in this Section.

(a) Wrongful Sale. Following an Event of Default by Seller under *Section 11.2(a)*, this Agreement will terminate automatically. Upon termination, Buyer will be entitled, as its exclusive remedy under this Agreement, to a termination fee in an amount equal to 1.5 times the difference between the Purchase Price under *Section 2.1* [Purchase Price] and the purchase price of the sale violating this Agreement (the "**Enhanced Termination Fee**"), plus Attorneys' Fees and Costs and costs of collection should PG&E fail to pay the full sum to Buyer within 30 days after Buyer's demand delivered in accordance with *Section 12.1* [Notices]. Seller's payment of the Enhanced Termination Fee will be deemed a release of Seller liability for any consequential, incidental, punitive, or other damages for an Event of Default by Seller under *Section 11.2(a)*.

(b) Impediment to Sale. Following Seller's Event of Default under one or more of *Sections 11.2(b), 11.2(c), 11.2(d), 11.2(e), 11.2(f), and 11.2(g)*, Buyer may elect one of the following exclusive remedies:



(i) Buyer may sue Seller for specific performance plus Attorneys' Fees and Cost and costs of collection as its exclusive remedy at law or in equity and without any right to consequential, incidental, punitive, or other damages; or

(ii) Buyer may terminate this Agreement upon 30 days' notice to Seller delivered in accordance with *Section 12.1* [Notices], or, if the Event of Default occurs less than 30 days before the Closing Date, then effective immediately upon notice to Seller. If Buyer elects to terminate this Agreement due to Seller's Event of Default, Buyer will be entitled, as its exclusive remedy under this Agreement, to a termination fee in the amount of \$3 million (the "**Termination Fee**"), plus Attorneys' Fees and Costs and costs of collection should Seller fail to pay the full sum within 30 days after Buyer's demand delivered in accordance with *Section 12.1* [Notices]. Seller's payment of the Termination Fee will release Seller from liability for any consequential, incidental, punitive, or other damages for an Event of Default by Seller under one or more of *Sections 11.2(b), 11.2(c), 11.2(d), 11.2(e), 11.2(f), and 11.2(g)*.

(c) Other Events of Default by Seller. Following an Event of Default by Seller under one or more of *Sections 11.2(h), 11.2(i), and 11.2(j)* or any other breach for which a remedy is specified under this Agreement (except as provided in *Sections 11.3(a)* [Wrongful Sale] and *11.3(b)* [Impediment to Sale]) Buyer may elect one of the following exclusive remedies:

(i) Buyer may waive any and all claims against Seller by reason of an Event of Default by Seller under one or more of *Sections 11.2(h), 11.2(i), and 11.2(j)* or other breach of this Agreement by Closing Escrow in accordance with this Agreement, and any costs that Buyers incurs to cure an Event of Default by Seller under *Section 11.2(j)* will be credited against the Purchase Price; or

(ii) Buyer may elect to terminate this Agreement upon notice to Seller delivered in accordance with *Sections 12.1* [Notices] within 30 days after the occurrence of the an Event of Default by Seller under one or more of *Sections 11.2(h), 11.2(i), and 11.2(j)* or other breach of this Agreement. Upon termination, Buyer will be entitled, as its exclusive remedy under this Agreement, to a penalty of \$200,000, plus Attorneys' Fees and Costs and costs of collection should Seller fail to pay the full sum to Buyer within 30 days after Buyer's demand delivered in accordance with *Section 12.1* [Notices]. Seller's payment of the penalty will release Seller from liability for any consequential, incidental, punitive, or other damages for any an Event of Default by Seller under one or more of *Sections 11.2(h), 11.2(i), and 11.2(j)* or other breach of this Agreement.

(d) Acknowledgement.

*THE PARTIES ACKNOWLEDGE AND AGREE THAT BUYER'S ACTUAL DAMAGES UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 11.2 WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO*

*DETERMINE. BY PLACING HIS OR HER INITIALS BELOW, AN AUTHORIZED REPRESENTATIVE OF EACH PARTY ACKNOWLEDGES THAT THE PARTIES HAVE AGREED, AFTER NEGOTIATION, ON THE AMOUNT OF THE ENHANCED TERMINATION FEE, THE TERMINATION FEE, AND THE PENALTY AS REASONABLE ESTIMATES OF BUYER'S DAMAGES FOR THE SPECIFIED EVENTS OF DEFAULTS BY SELLER OR OTHER BREACHES OF THIS AGREEMENT.*

Initials: PG&E \_\_\_\_\_ Buyer \_\_\_\_\_

#### **11.4 Events of Default by Buyer.**

The occurrence of any of the following will be Events of Default by Buyer:

(a) Buyer's Conditions Precedent have been satisfied or waived by Buyer, and Buyer fails to take all further actions necessary to Close Escrow, including any required deposit of funds into Escrow, and the failure continues for 20 days after notice from Seller given in accordance with *Section 12.1* [Notices]; or

(b) Buyer violates any other material covenant or fails to perform any other material obligation to be performed by Buyer under this Agreement when performance is due, and the violation or failure continues without cure for more than 30 days after notice from Seller given in accordance with *Section 12.1* [Notices] and specifying the nature of the violation or failure, or, if the cure cannot reasonably be completed within the 30-day period, if Buyer does not begin and complete the cure within a reasonable time as determined by Seller.

#### **11.5 Remedies of Seller.**

As material consideration to Buyer for entering into this Agreement, Seller expressly waives the right to any remedies other than those specified in this Agreement, whether at law or in equity. After an Event of Default by Buyer, Seller may elect one of the following remedies as its sole and exclusive remedy:

(a) Seller may institute an action for specific performance. Buyer acknowledges that an Event of Default by Buyer under *Section 11.4(a)* [Events of Default by Buyer] will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code section 3387.

(b) Seller may recover damages, plus Attorneys' Fees and Costs and costs of collection as its exclusive remedy at law or in equity and without any right to consequential, incidental, or punitive damages.

**11.6 Legal Proceedings.**

(a) Each Party agrees that venue is proper in and consents to the jurisdiction of the Superior Court for the City and County of San Francisco.

(b) No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

**12. GENERAL PROVISIONS**

**12.1 Notices.**

(a) Any notice, including any demand, consent, or approval required or permitted to be given under this Agreement must be in writing and be delivered by hand or sent by a reliable overnight courier service, with charges prepaid for next business day delivery. The date of any notice will be the date of: (a) receipt; or (b) rejection or other refusal to accept delivery; or (c) the inability to deliver because of a change in address for which no notice was given.

(b) Notices must be delivered to the addresses for notices listed below. Either Party may change its address for notice by delivering no less than 5 days' notice of its new address to the other Party in the manner specified in this section.

**City:** Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: **Hoedown Yard**  
Facsimile No.: (415) 552-9216

with copy to: Office of the City Attorney  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: **Hoedown Yard**  
Facsimile No.: (415) \_\_\_\_\_

**PG&E:**

If by mail:

Corporate Real Estate Transactions Department  
Pacific Gas and Electric Company  
P.O. Box 770000, Mail Code N15G  
San Francisco, CA 94177

With a concurrent copy to:

Law Department  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120  
Attn: Senior Director and Lead Counsel,  
Corporate and Commercial Group (Real Estate)

If by personal delivery or courier service:

Corporate Real Estate Transactions Department  
Pacific Gas and Electric Company  
245 Market Street, Room 1550  
San Francisco, CA 94105

With a concurrent copy to:

Law Department  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B30A  
San Francisco, CA 94105  
Attn: Senior Director and Lead Counsel,  
Corporate and Commercial Group (Real Estate)

## **12.2 Brokers and Finders.**

Neither Party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated in this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Party through whom the broker or finder makes his or her claim will be responsible for such commission or fee and shall indemnify and hold harmless the other Party from all claims, costs, and expenses (including reasonable Attorneys' Fees and Costs) incurred by the indemnified Party in defending against the same. The provisions of this Section will survive the Closing.

### **12.3 Successors and Assigns.**

This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, administrators, and permitted assigns. City will have the absolute right to assign its right, title, and interest in and to this Agreement to one or more assignees at any time before the Closing Date by an Assignment and Assumption Agreement substantially in the form of *Exhibit H*.

### **12.4 Amendments.**

Except as otherwise provided, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

### **12.5 Continuation and Survival of Representations and Warranties.**

The representations and warranties of Seller and Buyer in this Agreement will survive the Closing Date or earlier termination of this Agreement.

### **12.6 Merger of Prior Agreements.**

The Parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference), together with the Option Agreement, any executed Assignment and Assumption Agreement, and any license agreement entered into pursuant to the Option Agreement, will be the final expression of their agreement with respect to its subject matter and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The Parties further intend that this Agreement will constitute the complete and exclusive statement of its terms and that no extrinsic evidence of any kind (including prior drafts) may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement.

### **12.7 Parties and Their Agents; Approvals.**

The term "Seller" as used in this Agreement includes the plural as well as the singular. If there is more than one Seller, then the obligations under this Agreement imposed on Seller will be joint and several. As used in this Agreement, the term "Agents" when used with respect to either Party includes its agents, employees, officers, contractors, and representatives. Except as provided in *Section 12.19* [Authorizing Legislation Required], all approvals, consents, or other determinations permitted or required by City under this Agreement will be made by or through City's Director of Property unless otherwise provided in this Agreement, subject to applicable law.

### **12.8 Interpretation of Agreement.**

(a) Headings and Terms. The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and will not affect the meaning or interpretation of any provision contained in this Agreement. Unless otherwise specified, any reference in this Agreement to an Article, Section, Exhibit, Attachment, or defined term, will mean an Article, Section, Exhibit, Attachment, or

defined term in this Agreement. Any reference to an Article or a Section includes all subsections, clauses, and subparagraphs of that Article or Section.

(b) Attachments. All exhibits, schedules, supplements, and other addenda attached to this Agreement are incorporated in this Agreement, and all references to a specific document means the document as amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under this Agreement are outstanding.

(c) Words of Inclusion. The words "including," "such as," or similar terms when following any general term may not be construed to limit the term to the specific terms that follow, whether or not followed by language of non-limitation, such as "without limitation," "including, but not limited to," or similar words, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term and to be followed by the phrase "without limitation" or "but not limited to."

(d) Captions. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Agreement. Wherever reference is made to any provision "in this Agreement," "in this Agreement," "hereof," or similar terms, the reference will be deemed to refer to any reasonably related provisions of this Agreement in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Agreement.

(e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California and, if applicable, the San Francisco Charter.

(f) Laws. References to all laws, including specific statutes, relating to the rights and obligations of either Party mean the laws in effect on the Effective Date and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under this Agreement are outstanding, whether or not foreseen or contemplated by the Parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(g) No Party Drafter. This Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Agreement must be construed as a whole according to their common meaning to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this Agreement. If the Recitals conflict with the remaining provisions of this Agreement, the remaining provisions will prevail.

(h) Costs. The Party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs and costs incurred in performing the obligation, unless specifically provided otherwise.

(i) Context; Correlating Terms. Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(j) Days. References to days mean calendar days unless otherwise specified, except if the last day on which a Party must give notice, respond to a notice, or take any other action under this Agreement occurs on a day that is not a Business Day, the date by which the act must be performed will be extended to the next Business Day.

## 12.9 Attorneys' Fees.

(a) Prevailing Party. If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in the dispute, as the case may be, shall pay the prevailing Party's reasonable Attorneys' Fees and Costs. Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement will be recoverable separately from and in addition to any other amount included in the judgment, and the Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any judgment.

(b) Definition. "Attorneys' Fees and Costs" means, collectively, all of the following: (i) the fees of experts and counsel to the Parties, which may include printing, duplicating, air freight charges, travel and lodging, fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney, and other expenses incurred in the representation of the Party; (ii) all court costs and other costs incurred in connection with the prosecution or defense of any action or in enforcing or establishing rights under this Agreement; and (iii) costs incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, whether or not any action is brought with respect to the matter for which the costs were incurred.

(c) City. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

(d) PG&E. For purposes of this Agreement, the reasonable fees of PG&E's in-house attorneys will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for

which the PG&E's in-house attorney's services were rendered who practice in San Francisco law firms with approximately the same number of attorneys as employed by PG&E's Law Department.

#### **12.10 Sunshine Ordinance.**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code §§ 6250 *et seq.*), this Agreement, and any and all records, information, and materials submitted to the City under this Agreement will be public records subject to public disclosure. Seller acknowledges that the City may disclose any records, information, and materials submitted to the City in connection with this Agreement to the extent required to comply with applicable laws.

#### **12.11 Conflicts of Interest.**

Seller's Representative acknowledges that he or she is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that as of the Effective Date, he or she does not know of any facts which would constitute a violation of these provisions, and agrees that if Seller's Representative becomes aware of any such fact during the term of this Agreement, he or she will promptly notify the City.

#### **12.12 Notification of Limitations on Contributions.**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Seller further acknowledges that the prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20% in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees to provide to City the names of each person, entity or committee described above.



### **12.13 Non-Liability of Officials, Employees and Agents.**

Nothing in this Agreement will cause any elective or appointive board, commission, member, officer, employee, or other Agent of City or its Assignee to be personally liable to Seller, its successors, and assigns following any default or breach by City or for any amount that may become due to Seller, its successors, and assigns, or for any obligation of City under this Agreement. Similarly, nothing in this Agreement will cause any officer, director, employee, or other Agent of Seller, including Seller's Representative, to be personally liable to Buyer, its successors and assigns, in the event of any default or breach by Seller or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of Seller under this Agreement.

### **12.14 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.

### **12.15 Severability.**

If any provision of this Agreement or its application to any person, entity, or circumstance is determined to be invalid or unenforceable, the remainder of this Agreement, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable will not be affected by this Agreement, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

### **12.16 Agreement Not to Market Property.**

Seller agrees that unless and until this Agreement terminates by its terms, Seller will not negotiate with any other parties pertaining to the sale of the Property or market the Property to third parties.

### **12.17 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party will be considered the drafter of this Agreement, and no presumption or rule that an ambiguity will be construed against the Party drafting the clause will apply to the interpretation or enforcement of this Agreement.

### **12.18 Memorandum.**

Neither Party will record this Agreement or any memorandum of this Agreement in the Official Records.

### **12.19 Authorizing Legislation Required.**

Seller acknowledges and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until the San Francisco Board of Supervisors has duly and finally enacted legislation approving this Agreement and authorizing the purchase and sale transaction. Therefore, any obligations or liabilities of City under this Agreement are contingent upon the final legislation, and this Agreement will be null and void if the San Francisco Board of Supervisors does not enact finally legislation, in its sole discretion. Approval by any City department, commission, or agency will not create any binding obligations on City or be deemed to imply that the San Francisco Board of Supervisors will enact authorizing legislation.

### **13. DEFINITIONS.**

"**Accepted Conditions of Title**" is defined in the Option Agreement.

"**Agents**" is defined in Section 12.7.

"**Agreement**" is defined in the preamble.

"**Appurtenances**" is defined in Section 1.2(c).

"**Assignee**" means the Person acquiring all of City's interest in and rights under the Option Agreement or this Agreement.

"**Assignment and Assumption Agreement**" means the document in the form of Exhibit H, and described and defined in the Option Agreement.

"**Attorneys' Fees and Costs**" is defined in Section 12.9(b).

"**Business Day**" means Monday through Friday, excluding holidays observed by City.

"**Buyer**" is defined in the preamble.

"**Buyer's Conditions Precedent**" is defined in Section 5.1.

"**City**" is defined in the preamble.

"**Close of Escrow**" and "**Closing**" are defined in Section 2.2.

"**Closing Date**" is defined in Section 6.2.

"**CPUC**" means the California Public Utilities Commission.

"**CPUC Approval**" is defined in the Section 5.7(a).

"**Deed**" is defined in Section 3.1.

"**Deed Restriction**" means the Covenant and Environmental Restriction on Property recorded on November 6, 2012 in the Official Records as Instrument No. 2012J538847.

**"Department"** is defined in the preamble.

**"Designation Agreement"** is defined in Section 6.5.

**"Disclosure Defects"** is defined in Section 8.3(a).

**"Documents"** is defined in Section 4.2

**"Effective Date"** is defined in Section 1.3.

**"Enhanced Termination Fee"** is defined in Section 11.3(a).

**"Escrow"** is defined in Section 2.3.

**"Event of Default"** is defined in Section 11.2.

**"Federal Tax Code"** is defined in Section 2.2.

**"Fire Hazard Severity Zone"** is defined in Section 4.6.

**"Hazardous Material"** means any substance, waste, or material that is now or in the future designated by any regulatory agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos-containing materials, and presumed asbestos-containing materials (as defined in Cal-OSHA General Industry Safety Order for Asbestos), whether or not part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property by or on behalf of Seller, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

**"Improvements"** is defined in Section 1.2(b).

**"Indemnify"** means to indemnify, protect, defend, and hold harmless forever.

**"Indemnification"** and **"indemnity"** have correlating meanings

**"Land"** is defined in Section 1.2(a).

**"Map Act"** is defined in Section 5.6.

**"Map Act Compliance"** is defined in Section 5.6.

**"Natural Hazards Expert"** is defined in Section 4.6.

**"Natural Hazards Report"** is defined in Section 4.6.

**"New Title Exception"** is defined in Section 3.4(b).

**"Official Records"** means the Official Records of the City and County of San Francisco.

"**Option Agreement**" is defined in Section 1.1.

"**Paper Street**" is defined in Section 5.1(f).

"**Parties**" is defined in the preamble.

"**Party**" is defined in the preamble.

"**Person**" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

"**PG&E**" is defined in the preamble.

"**Preliminary Report**" is defined in the Option Agreement.

"**Property**" is defined in Section 1.2.

"**Purchase Price**" is defined in Section 2.1.

"**Purchase Rate**" is defined in Section 2.1.

"**Reference Date**" is defined in the preamble.

"**Release and Indemnity Agreement**" is defined in Section 4.3.

"**San Francisco**" is defined in Section 1.2(a).

"**SBE**" is defined in Section 7.3.

"**Seller**" is defined in the preamble.

"**Seller's actual knowledge**" is defined in Section 8.1(j).

"**Seller's Conditions Precedent**" is defined in Section 5.4.

"**Seller's Cure Period**" is defined in Section 8.3(c)(i).

"**Seller's Representative**" is defined in Section 8.1(j).

"**State Tax Code**" is defined in Section 2.2.

"**Taxes**" is defined in Section 7.3.

"**Termination Fee**" is defined in Section 11.3(b)(ii).

"**Title Company**" is defined in Section 3.2.

"**Title Policy**" is defined in Section 3.2.

"**Water Board**" is defined in Section 4.3(a)(iv).

"Wildland Fire Zone" is defined in Section 4.6.

[Signatures follow on next page.]

Executed as of the last date written below.

**SELLER:**

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

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

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

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

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

JOHN UPDIKE  
Director of Property

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

Authorized by Board of Supervisors Resolution  
No. XX.

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

[NAME OF DEPUTY]  
Deputy City Attorney

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement (in the form attached as *Exhibit D*) and act as the Reporting Person (as defined in the Designation Agreement). Title Company's failure to execute below will not invalidate the Agreement between City and Seller.

**TITLE COMPANY:**

CHICAGO TITLE INSURANCE COMPANY

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

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

**PARCEL ONE:**

BEGINNING AT A POINT ON THE WESTERLY LINE OF MICHIGAN STREET DISTANT THEREON 150 FEET NORTHERLY FROM THE NORTHWESTERLY CORNER OF MICHIGAN AND TWENTY-SECOND STREETS; AND RUNNING THENCE NORTHERLY ALONG SAID LINE OF MICHIGAN STREET 179 FEET; THENCE AT A RIGHT ANGLE WESTERLY 78.24 FEET; THENCE SOUTHWESTERLY 4 FEET, MORE OR LESS, TO A POINT WHICH IS DISTANT 120 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 325 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 20 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 6 FEET; THENCE SOUTHWESTERLY 51 FEET AND 4 INCHES, MORE OR LESS, TO A POINT WHICH IS DISTANT 95 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO AND DISTANT 200 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 95 FEET TO THE EASTERLY LINE OF ILLINOIS STREET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF ILLINOIS STREET 15 FEET; THENCE AT A RIGHT ANGLE EASTERLY 87 FEET AND 6 INCHES; THENCE SOUTHWESTERLY 36 FEET, MORE OR LESS, TO A POINT WHICH IS DISTANT 117 FEET AND 7 INCHES WESTERLY FROM THE WESTERLY LINE OF MICHIGAN STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 150 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; AND THENCE EASTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 117 FEET AND 7 INCHES, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING PART OF POTRERO NUEVO BLOCK NO. 428.

**PARCEL TWO:**

BEGINNING AT A POINT ON THE EASTERLY LINE OF ILLINOIS STREET, DISTANT THEREON 200 FEET NORTHERLY FROM THE NORTHEASTERLY CORNER OF ILLINOIS AND TWENTY-SECOND STREETS; AND RUNNING THENCE NORTHERLY ALONG SAID LINE OF ILLINOIS STREET 129 FEET; THENCE AT A RIGHT ANGLE EASTERLY 121.76 FEET; THENCE SOUTHWESTERLY 4 FEET, MORE OR LESS, TO A POINT WHICH IS DISTANT 120 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO AND DISTANT 325

FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 20 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET; THENCE AT A RIGHT ANGLE EASTERLY 6 FEET; THENCE SOUTHWESTERLY 51 FEET AND 4 INCHES, MORE OR LESS, TO A POINT WHICH IS DISTANT 95 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 200 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT RIGHT ANGLES THERETO; AND THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 95 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 428.

PARCEL THREE:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF TWENTY-SECOND STREET DISTANT THEREON 97.84 FEET EASTERLY FROM THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF TWENTY-SECOND STREET WITH THE EASTERLY LINE OF ILLINOIS STREET AND RUNNING THENCE EASTERLY ALONG SAID LINE OF TWENTY-SECOND STREET 102.16 FEET TO THE WESTERLY LINE OF MICHIGAN STREET; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF MICHIGAN STREET 150.0 FEET; THENCE AT A RIGHT ANGLE WESTERLY 117.583; THENCE NORTHEASTERLY 36 FEET, MORE OR LESS, TO A POINT DISTANT 87.5 FEET EASTERLY FROM THE EASTERLY LINE OF ILLINOIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 185.0 FEET NORTHERLY FROM THE NORTHERLY LINE OF TWENTY-SECOND STREET, MEASURED AT A RIGHT ANGLE THERETO; THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF TWENTY-SECOND STREET 87.5 FEET TO A POINT IN THE EASTERLY LINE OF ILLINOIS STREET; THENCE SOUTHERLY ALONG SAID LINE OF ILLINOIS STREET 87.16 FEET; THENCE AT A RIGHT ANGLE EASTERLY 97.84 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 97.84 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF TWENTY-SECOND STREET AND THE EASTERLY LINE OF ILLINOIS STREET; AND RUNNING THENCE EASTERLY ALONG SAID LINE OF TWENTY-SECOND STREET 97.84 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 97.84 FEET; THENCE AT A RIGHT ANGLE WESTERLY 97.84 FEET TO THE EASTERLY LINE OF ILLINOIS STREET; AND THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF ILLINOIS STREET 97.84 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 428.



PARCEL FIVE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF TWENTY-SECOND STREET AND THE EASTERLY LINE OF MICHIGAN STREET; RUNNING THENCE NORTHERLY AND ALONG SAID EASTERLY LINE OF MICHIGAN STREET 225 FEET AND 6-½ INCHES TO A POINT ON SAID EASTERLY LINE OF MICHIGAN STREET, DISTANT THEREON 640 FEET AND 5-½ INCHES SOUTHERLY FROM THE SOUTHERLY LINE OF TWENTIETH STREET; THENCE AT A RIGHT ANGLE EASTERLY AND PARALLEL WITH SAID SOUTHERLY LINE OF TWENTIETH STREET 100 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 5 FEET AND 6-½ INCHES; THENCE AT A RIGHT ANGLE EASTERLY 140 FEET TO THE FORMER CENTER LINE OF GEORGIA STREET, NOW CLOSED; THENCE AT A RIGHT ANGLE SOUTHERLY AND ALONG SAID CENTER LINE 220 FEET TO THE NORTHERLY LINE OF TWENTY-SECOND STREET PRODUCED EASTERLY; THENCE AT A RIGHT ANGLE WESTERLY ALONG SAID NORTHERLY LINE OF TWENTY-SECOND STREET AND ITS EASTERLY PRODUCTION 240 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 445, AND A PORTION OF GEORGIA STREET, NOW CLOSED.

PARCEL SIX:

BEGINNING AT A POINT ON THE EASTERLY LINE OF MICHIGAN STREET, DISTANT THEREON 640 FEET AND 5½ INCHES SOUTHERLY FROM THE SOUTHERLY LINE OF TWENTIETH STREET, RUNNING THENCE AT A RIGHT ANGLE EASTERLY AND PARALLEL WITH SAID SOUTHERLY LINE OF TWENTIETH STREET 100 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 5 FEET AND 6-½ INCHES; THENCE AT A RIGHT ANGLE EASTERLY 140 FEET TO THE FORMER CENTER LINE OF GEORGIA STREET, NOW CLOSED; THENCE AT A RIGHT ANGLE NORTHERLY 50 FEET; THENCE AT A RIGHT ANGLE WESTERLY 240 FEET TO THE EASTERLY LINE OF MICHIGAN STREET; THENCE SOUTHERLY ALONG SAID LINE OF MICHIGAN STREET 44 FEET AND 5-½ INCHES TO THE POINT OF BEGINNING.

APN(s): Assessor's Lot 008A, Block 4110 and Assessor's Lot 002, Block 4120

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**EXHIBIT B**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

(Space above this line reserved for Recorder's use only)

**GRANT DEED**

(Assessor's Block 4110, Lot 008A & Block 4120, Lot 002)

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("**Grantor**"), grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Grantee**"), the real property located in the City and County of San Francisco, State of California, described on *Exhibit A* attached and made a part of this Grant Deed (the "**Property**").

TOGETHER WITH any and all rights, privileges and easements incidental or appurtenant to the Property, including any and all minerals, oil, gas, and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights, and water stock relating to the Property, and any and all easements, rights-of-way, or other appurtenances used in connection with the beneficial use and enjoyment of the land and all of Grantor's right, title and interest, if any, in and to any and all roads and alleys adjoining or servicing the Property.

The Property is no longer necessary or useful to Grantor in its performance of its duties to the public.

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_, By: \_\_\_\_\_  
Name:

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

\_\_\_\_\_, By: \_\_\_\_\_  
Name

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

*[Signatures must be acknowledged.]*

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is accepted pursuant to Board of Supervisors' Resolution No. XXX, approved [date], and the grantee consents to its recordation by its duly authorized officer.

Dated: \_\_\_\_\_

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

John Updike  
Director of Property

**EXHIBIT C**

**FORM OF CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of the U.S. real property interest by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation and subsidiary of PG&E Corporation ("Transferor"), the undersigned certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's office address is \_\_\_\_\_

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement in this Agreement could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 20\_\_.

On behalf of:

\_\_\_\_\_  
[NAME]

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

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

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**EXHIBIT D**

**FORM OF DESIGNATION AGREEMENT**

This DESIGNATION AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_, is by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation and subsidiary of PG&E Corporation ("Seller"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and \_\_\_\_\_ TITLE INSURANCE COMPANY ("Title Company").

A. Pursuant to that certain Agreement for Purchase and Sale of Real Estate entered into by and between Seller and City, dated \_\_\_\_\_, 20\_\_\_ (the "Purchase Agreement"), Seller has agreed to sell to City, and City has agreed to purchase from Seller, certain real property located in City and County of San Francisco, California, more particularly described in Exhibit A (the "Property"). The purchase and sale of the Property is sometimes in this Agreement below referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated under this Agreement (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subsection 2(b)(i) of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. \_\_\_\_\_, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller, City and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Seller, City and Title Company agree as follows:

1. Title Company is designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and City shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title Company with Seller's correct taxpayer identification number may subject Seller to civil or



criminal penalties imposed by law. Accordingly, Seller certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is \_\_\_\_\_.

4. The names and addresses of the Parties are as follows:

**SELLER:**

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

**CITY:**

Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Facsimile No.: (415) 552-9216

**TITLE COMPANY:**

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

5. Each of the Parties will retain this Agreement for a period of four years following the calendar year during which the date of closing of the Transaction occurs.

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of the first date written above.

**SELLER:**

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile No.: ( ) \_\_\_\_\_

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

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

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

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

JOHN UPDIKE  
Director of Property

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

**TITLE COMPANY:**

\_\_\_\_\_ TITLE INSURANCE  
COMPANY

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

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

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

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**EXHIBIT E**

**APPROVED SITE MANAGEMENT PLAN**

(June 22, 2012)

(To be attached.)

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**EXHIBIT F**

**COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY**

(To be attached.)



**EXHIBIT G**

**LIST OF DOCUMENTS DELIVERED BY SELLER**

(To be attached.)





**EXHIBIT H**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

(To be attached.)



**EXHIBIT I**

**ENVIRONMENTAL RISK MANAGEMENT MEASURES**

(To be attached.)



**EXHIBIT J**

**NATURAL HAZARDS REPORT**

(To be attached.)

**EXHIBIT K**

**FORM OF RELEASE AND INDEMNITY AGREEMENT**

(To be attached.)





**EXHIBIT K**

**FORM OF RELEASE AND INDEMNITY AGREEMENT**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

**[INSERT NAME OF PG&E  
REPRESENTATIVE]**  
PACIFIC GAS AND ELECTRIC COMPANY  
P.O. Box 770000, Mail Code N15G  
San Francisco, CA 94177

**RELEASE AND INDEMNITY AGREEMENT**

THIS RELEASE AND INDEMNITY AGREEMENT ("Agreement"), dated for reference purposes only as of \_\_\_\_\_, 20\_\_, is made by and between Pacific Gas and Electric Company, a California corporation ("Seller"), and \_\_\_\_\_ ("Buyer"), in connection with that certain "Agreement of Purchase and Sale for Real Estate" ("Purchase Agreement") dated \_\_\_\_\_, 20\_\_, relating to the real property described on Attachment A hereto and made a part hereof. The term "Property" shall have the same meaning as set forth in the Purchase Agreement. Unless otherwise stated herein, all capitalized words shall have the meaning ascribed to them in the Purchase Agreement. Unless otherwise specifically provided, all provisions of this Agreement shall be effective as of the date of recordation of this Agreement.

Simultaneously with the Close of Escrow on the Property, Seller and Buyer agree that this Agreement shall be recorded against title to the Property and shall run with the Property. Buyer agrees that it and all subsequent parties that take title to the Property shall be bound by the terms and conditions of this Agreement.

In consideration of, and as a material inducement to, Seller's agreement to sell the Property to Buyer and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Definitions. The following terms have the meanings ascribed to them below for purposes of this Agreement:

1.1 "Environmental Requirements" means all applicable present and future laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, judicial, administrative and regulatory decrees, directives and judgments of all governmental agencies, departments, commissions and boards, relating to the protection of human health or safety, or regulating or relating to industrial hygiene or environmental conditions, or the protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including all requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of Hazardous Substances, whether solid, liquid or gaseous in nature, into the air, surface

water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, whether solid, liquid or gaseous in nature.

1.2 "Hazardous Substances" means any hazardous or toxic material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government under any Environmental Requirements. For purposes of this Agreement, Hazardous Substances include any material or substance:

(a) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) ("CERCLA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1151 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the River and Harbor Act of 1899 (33 U.S.C. § 401 et seq.); the National Emission Standard for Asbestos (40 C.F.R. § 61.140 et seq.), the OSHA Construction Standards (29 C.F.R. § 1926.1001 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Oil Pollution Act (33 U.S.C. § 2701 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.); the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.); the Atomic Energy Act of 1954, (42 U.S.C. § 2011 et seq.); the Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101 et seq.); the Medical Waste Management Act (Cal. Health & Safety Code § 25015 et seq.); the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.); the Carpenter-Presley-Tanner Hazardous Substance Account Act ( Cal. Health and Safety Code § 25300 et seq.); the Hazardous Waste Act (Cal. Health & Safety Code § 25100 et seq.); and all rules and regulations of the United States or California Environmental Protection Agency or any successor agency, or any other state or federal department, board or agency, or any other agency or governmental board or entity having jurisdiction, as any of the foregoing have been, or are hereafter amended from time to time; or

(b) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any State of the United States or any political subdivision thereof; or which cause, or are listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or

(c) the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons or to the environment; or

(d) that contains gasoline, diesel fuel or other petroleum hydrocarbons;

or

(e) that contains lead-based paint or other lead contamination, polychlorinated biphenyls or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

(f) that contains radon gas.

1.3 "Remediation" refers to the process of, and all work and planning performed in connection with, the investigation, testing for, monitoring, remediation, containment, transportation, removal and disposal or recycling of Hazardous Substances and containers of Hazardous Substances from the Property and any other property to which Hazardous Substances originating on the Property may migrate onto or under in the future ("Other Property"), and the repair and restoration of the Property and Other Property, and restoration and mitigation of affected natural resources, regardless of whether such actions are required by Environmental Requirements.

2. Generally. It is the intent of Seller and Buyer that, after the Close of Escrow, Buyer shall, as between Seller and Buyer bear all responsibility, cost and risk of (a) Hazardous Substances existing on the Property or Other Property and (b) be solely responsible for any and all Remediation of the Property and Other Property and for compliance with any and all Environmental Requirements imposed upon the Property or Other Property. Seller shall not have any Remediation obligations or obligations to comply with Environmental Requirements after the Close of Escrow. These risks, costs and obligations of Buyer have been taken into account in establishing the Purchase Price for the Property. To ensure that Buyer understands the risks inherent in Buyer's execution of this Agreement and the purchase of the Property Seller has strongly advised Buyer to investigate the condition and suitability of all aspects of the Property and all matters affecting the value or desirability of the Property, or that may be perceived to affect the value or desirability of the Property, including the potential environmental hazards arising from the presence of Hazardous Substances on, under, about, adjacent to or affecting the Property, and all issues relating to compliance with all laws, regulations and ordinances relating thereto. Buyer hereby acknowledges and confirms that it has been afforded the opportunity to, and has, as of the date of this Agreement, performed all environmental inspections, tests and studies, including structural investigations, invasive testing and/or groundwater sampling on, under, about or adjacent to the Property, which Buyer and its environmental consultants and engineers have deemed necessary to assess the condition of the Property and to assume the risk of the release and indemnity provided for in this Agreement.

2.1 Land Use Covenant Amendment. Seller agrees to allow Buyer and/or any subsequent owner of the Property to seek the San Francisco Bay Regional Water Quality Control Board's (Water Board) approval to amend the Covenant and Environmental Restriction currently encumbering the Property (the "Land Use Covenant"), provided that the required remedial actions set forth in Section 2.4 below are satisfied. Buyer will be required to periodically certify to Seller that Buyer is in compliance with the Land Use Covenant requirements and any other requirements the Water Board imposes as a condition precedent to amending the existing Land Use Covenant. Each certificate must be supported by the written report of an independent third-party onsite construction monitor.

2.2 Site Characterization for Existing Uses. Seller has conducted past investigation of environmental conditions at the Property and has characterized the Property to the satisfaction of the Water Board, which Buyer and Seller agree is adequate for the Property's current use. Seller agrees not to conduct further testing of the Property unless required by an order of a regulatory agency, a court of law or an administrative court, of competent jurisdiction.

2.3 Newly Discovered Conditions. Seller agrees not to impose its own land use covenant restricting future uses of the Property. If Buyer or future owner, through site investigation, after the Close of Escrow, discover(s) new conditions, the party making the discovery will be required to disclose the new condition to the Water Board and any other regulatory agency or court of competent jurisdiction and to comply with the agency's, or the court of law's or the administrative court's direction on whether further investigation, remediation, monitoring, or other measures will be required by order or through amendments to the Land Use Covenant. Seller and Buyer and future owners shall have the right to submit comments to the Water Board for consideration in its deliberations:

2.4 Authorized Land Uses and Required Remedial Actions.

Possible New Uses	Remediation
High-density residential; temporary lodging; recreational use areas underlain by hardscape, commercial, institutional.	Install and maintain Durable Cover. Implement Institutional Controls.
Public open space covered by hardscape.	Same as above.
Public open space covered by "softscape," including landscaping; recreational use areas not using hardscape surfaces.	Install and maintain 3-foot layer of Clean Soil underlain by a Demarcation Layer between native soil and ground surface. The Clean Soil layer will cover landscaped areas, including raised landscaping planters, and line tree pits. The thickness of Clean Soil layer will be increased if needed to include root bearing zones and below-grade irrigation systems.  Clean Soil must meet the prevailing standards (i.e., Environmental Screening Levels, as defined by the Water Board or Cal-EPA) applicable to future site users.

Durable Cover must meet all applicable standards of the San Francisco Public Works Code, the Port of San Francisco's Building Code, and any other applicable rules or regulations. The Demarcation Layer must provide a visual indicator that distinguishes Clean Soil from underlying native soil, and serve as a deterrent to further excavation and be resistant to penetration by hand tools. Additional Remediation or Environmental Requirements may also be required if the use of the Property is altered or the Land Use Covenant is amended. Buyer agrees that it shall comply with all additional Remediation and Environmental Requirements or other requirements and obligations set forth in this Agreement and as ordered by an agency, a court of law or an administrative court, of competent jurisdiction. Buyer agrees it will remove identified areas of arsenic-impacted soil to achieve site-specific background concentration of arsenic as defined and summarized in Report of Results – Additional Soil Investigation, Hoe Down Yard (AMEC, 4/12/11). Buyer further agrees that Seller shall not have any obligation to conduct additional Remediation or comply with additional Environmental Requirements caused by existing conditions or newly discovered conditions on the Property or on Other Property arising out of any change in use of the Property.

2.5 Disclosure. Buyer agrees to notify all contractors, subcontractors, tenants and subtenants, including all residents, of environmental conditions and required institutional controls at the Property.

2.6 Institutional Controls. Buyer agrees to implement the following institutional controls: controlled access prior to and during construction; environmental health and safety plans for construction and maintenance workers; dust control during construction and maintenance; storm water pollution prevention during construction; regular inspection, maintenance and repair of Durable Covers; a Water Board approved Risk Management Plan; a funding mechanism providing sufficient funds for maintenance and capital repair of public use areas in accordance with the Risk Management Plan for the life of the public use areas.

2.7 Prohibited Land Uses. The following land uses are prohibited on the Property: school, daycare, hospital, private open space at grade, growing plants for human consumption in native soil, use of groundwater (except for dewatering).

### 3. Release.

3.1 Buyer, for itself, and for any future owners of all or a part of the Property, and each of their respective predecessors, successors, assigns, licensees, officers, directors, employees, agents, partners, shareholders, transferees, parent and subsidiary corporations, legal representatives, heirs, beneficiaries, executors and administrators (together with Buyer, "Releasing Parties") hereby fully and forever releases, exonerates, discharges and covenants not to sue Seller and/or each and all of its past, present and future officers, directors, partners, employees, agents, representatives, shareholders, attorneys, affiliates, parent and subsidiary corporations, divisions, insurance carriers, heirs, legal representatives, beneficiaries, executors, administrators, predecessors, transferees, successors (including lenders who become successors-in-title) and assigns (hereinafter "Released Parties") of, from and for any and all losses (including diminution in the value of the Property and other consequential damages), costs, claims,

demands, actions, suits, orders, causes of action, obligations, controversies, debts, expenses, accounts, damages, judgments and liabilities of whatever kind or nature, and by whomsoever asserted, in law, equity or otherwise (each a "Claim" and, collectively, "Claims") that the Releasing Parties or the Property may suffer or claim to suffer, based in whole or in part on (a) the presence, or threatened or suspected presence, generation, processing, use, management, treatment, storage, disposal, Remediation, transportation, recycling, emission or release or threatened emission or release, whether in the past, present or future, of any Hazardous Substances on, about, from, adjacent to or affecting the Property, including Claims arising from the passive or active negligence of the Releasing Parties.

3.2 Buyer represents and warrants to Seller that it is the sole and lawful owner of all right, title and interest in and to every Claim that Buyer purports to release herein, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm, association, corporation or other entity, any right, title or interest in any such Claim. In the event that such representation is false, and any such Claim is asserted against any of the Released Parties, by any party or entity who is the assignee or transferee of such Claim, then Buyer shall fully indemnify, defend and hold harmless the Released Party against whom such Claim is asserted from and against such Claim and from all actual costs, fees, expenses, liabilities and damages that that party incurs as a result of the assertion of such Claim.

#### 4. Indemnity.

4.1 Buyer agrees and covenants, at its sole cost and expense, to indemnify, protect, defend by counsel approved by Seller, and hold the Released Parties harmless, from and against any and all Claims (including the payment of damages, both actual and consequential, the payment of the actual fees and expenses of experts, attorneys and others and the payment of "response costs" under CERCLA or any other Environmental Requirements) arising from or relating, in whole or in part, to: (a) any violation of the Environmental Requirements including attorneys' fees and consultants' fees, investigation and laboratory fees, court costs and other litigation expenses with respect to the Property; (b) any lawsuit brought or threatened, settlement reached, or government order relating to any Hazardous Substances on, about, adjacent to or affecting the Property; (c) the use, generation, refining, manufacture, transportation, transfer, production, processing, storage, handling or treatment of any Hazardous Substances on, under, from, or affecting the Property or Other Property; (d) the presence, disposal, dumping, escape, seepage, leakage, spillage, discharge, emission, pumping, emptying, injecting, leaching, pouring, release or threatened release of any Hazardous Substances on, under, from or affecting the Property or any Other Property; (e) any Remediation of any Hazardous Substances on, under, about or affecting the Property or any Other Property to the extent required by any Environmental Requirements; or (f) any personal injury (including wrongful death) or property damage (real or personal) resulting from any Hazardous Substances on, under, from or affecting the Property or Other Property. The foregoing indemnity includes Claims arising from the passive or active negligence of the Released Parties.

Buyer's indemnification obligation to Seller shall be secured by a letter of credit, in a form and from a financial institution acceptable to Seller, in the amount of \$1 million for a period of three years, beginning on the date a certificate of occupancy is first issued for any new

building(s) at the Property. Buyer's indemnification obligation shall neither be limited to the \$1 million letter of credit nor to the three year period after the certificate of occupancy is issued.

4.2 The purpose of the foregoing indemnity is to protect Seller and the other Released Parties from expenses, damages, liabilities and obligations for personal injury of any type and injury to real or personal property of any type related to the presence of Hazardous Substances on or under the Property or Hazardous Substances which may migrate to Other Property after the Close of Escrow. Buyer's obligation to defend includes the obligation to defend claims and participate in administrative proceedings, even if they are false or fraudulent. Buyer understands and agrees that its liability to Seller shall arise upon the earlier to occur of (i) the discovery of, or the threat or suspected presence of, any Hazardous Substances on, under, about or adjacent to or affecting the Property, whether or not the United States Environmental Protection Agency, any other federal agency or any state or local environmental or other agency or political subdivision or any court of law, administrative court or tribunal has taken or threatened any action in connection with the presence, or threatened or suspected presence, of any Hazardous Substances or (ii) the initiation of any Claims, and not upon the realization of loss or damage.

5. Statutory Waiver. Buyer acknowledges that it may hereinafter discover facts different from or in addition to those that it now knows or believes to be true with respect to the matters which are the subject of this Agreement, and agrees that this Agreement shall remain in effect in all respects, notwithstanding the discovery of such different or additional facts. In addition, Buyer understands and agrees that its agreements and covenants contained in this Agreement extend to all claims of any nature and kind, known or unknown, suspected or unsuspected, based in whole or in part on facts existing in the past or as of the date hereof, and in that regard, Buyer acknowledges that it has read, considered and understands the provisions of Section 1542 of the California Civil Code which reads as follows:

Section 1542. General Release

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Based upon the advice of its counsel, Buyer knowingly and voluntarily waives and relinquishes any and all rights that it may have under Section 1542 as well as under the provisions of all comparable, equivalent, or similar statutes and principles of common law or other decisional law of any and all states of the United States or of the United States. Buyer understands and acknowledges the significance and consequences of this waiver and hereby assumes the risk of any injuries, losses or damages that may arise from such waiver.

Buyer: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

6. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

6.1 Buyer has in all respects voluntarily and knowingly executed this Agreement.

6.2 Buyer has had an opportunity to seek and has sought independent legal advice from attorneys of his or its choice with respect to the advisability of executing this Agreement.

6.3 Buyer has made such investigation of the facts pertaining to this Agreement as it deems necessary.

6.4 The terms of this Agreement are contractual and are the result of negotiation between Buyer and Seller.

6.5 This Agreement has been carefully read by Buyer and the contents hereof are known and understood by Buyer.

6.6 If Buyer is an entity, Buyer is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business in the state in which the Property is located and the persons executing this Agreement on behalf of Buyer have the full right and authority to execute this Agreement on behalf of Buyer and to bind Buyer without the consent or approval of any other person or entity. This Agreement is (a) duly authorized, properly executed and delivered by Buyer, (b) legal, valid and binding obligations of Buyer enforceable in accordance with its terms at the time of Close of Escrow, and (c) not in violation of any agreement or judicial order to which Buyer is a party or to which it is subject.

7. Mandatory Negotiation and Mediation.

7.1 Except as provided in Section 7.2, Seller and Buyer agree to first negotiate and then mediate with respect to any claim or dispute arising out of or relating to this Agreement, before resorting to court action. Either party may initiate settlement negotiations by providing written notice to the other party, setting forth the subject of the claim or dispute. Buyer and Seller agree to cooperate in scheduling negotiations and to participate in the settlement



negotiations in good faith. If Buyer and Seller fail to settle such claim or dispute within thirty (30) days after the date of mailing of the notice initiating settlement negotiations or within such additional time period as the parties may agree in writing, the parties agree to submit the matter to JAMS for mediation within thirty (30) days thereafter. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the claim or dispute and the relief requested (the "Mediation Notice"). Except as provided herein or by written agreement of the parties, the mediation shall be conducted in San Francisco pursuant to the JAMS rules. The parties will cooperate in selecting a mediator from the JAMS panel of neutrals, and in scheduling the mediation proceedings. If the parties do not select a mediator within thirty (30) days after the Mediation Notice, the parties agree that either party may request that JAMS in San Francisco, California, facilitate the choice of mediator by applying the "strike and rank" process used for appointment of arbitrators in arbitration proceedings, or to appoint a mediator, if necessary, and both parties agree to the appointment of such mediator as so selected. The parties agree to participate in the mediation in good faith, and to share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either of the parties, their employees, agents, experts and attorneys, and by the mediator and any other JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, but evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If JAMS should no longer exist at the time the claim or dispute arises, the matter shall be submitted to its successor entity, or if there is no such successor entity, to the American Arbitration Association or other similar organization mutually agreed upon by the parties, and except as provided herein or by mutual agreement of the parties, the mediation rules of such successor or alternate organization shall apply. Except as may be expressly set forth in any written settlement agreement, should the matter be settled by negotiation or mediation prior to commencing court action, each party shall pay its own attorneys' fees and costs. Except as provided in Section 7.2, neither party may commence an action arising out of or relating to this Agreement until expiration of the negotiation period and completion of the initial mediation session in accordance with this Section 7.2. If either party commences an action with respect to a claim or dispute covered by this Section 7.2 without first attempting to resolve the matter through negotiation and mediation, or refuses to negotiate or mediate after a request has been made, then that party shall not be entitled to recover attorneys' fees and costs, even if such fees and costs would otherwise be available to that party in such action.

7.2 Either party may seek equitable relief to preserve the status quo prior to participating in the negotiation and mediation proceedings required pursuant to Section 7.1. In addition, matters that are within the jurisdiction of probate, small claims, or bankruptcy court are excluded from mandatory negotiation and mediation hereunder.

7.3 The provisions of this Section 7 may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all fees and costs, including reasonable attorneys' fees, to be paid by the party against which enforcement is ordered. The covenants of Seller and Buyer contained in this Section 7 shall the expiration or earlier termination of this Agreement or the Close of Escrow.

## 8. Miscellaneous.

8.1 Buyer acknowledges (a) this Agreement is the result of extensive good faith negotiations between the parties to this Agreement or through their respective counsel, (b) Buyer's counsel has carefully reviewed and examined this Agreement before execution by Buyer, and (c) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

8.2 In the event that any party shall bring an action to enforce its rights under this Agreement, or relating to the interpretation hereof, whether for declaratory or other relief, the prevailing party in any such proceeding shall be entitled to recover from the other party reasonable attorneys' fees and all costs, expenses and disbursements that the prevailing party incurred in connection with such proceeding and any appeal thereof (including the reasonable costs of discovery, investigation, preparation for trial, professional or expert consultation and testimony). Buyer shall also pay all attorneys' fees and costs Seller incurs in defending this Agreement or otherwise protecting Seller's rights in any voluntary or involuntary bankruptcy case, assignment for the benefit of creditors, or other insolvency, liquidation or reorganization proceeding involving Buyer or this Agreement, including all motions and proceedings related to relief from an automatic stay, lease assumption or rejection, use of cash collateral, claim objections, disclosure statements and plans of reorganization. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The non-prevailing party shall also pay the attorneys' fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. For purposes hereof, the reasonable fees of Seller's in-house attorneys who perform services in connection with any such action are recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by Seller's Law Department. Any such fees and costs incurred prior to judgment, award, or decree may be included in any judgment, award or decree entered in such proceeding in favor of the prevailing party. Any such fees, costs and expenses incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

8.3 This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Buyer and Seller. No transfer of an interest in the Property or this Agreement by Buyer or its assignees shall operate to relieve Buyer of its obligations hereunder.

8.4 The failure of Seller to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any of such terms, nor shall it militate against the right of Seller to insist upon strict compliance herewith at any later time.

8.5 This Agreement shall not constitute or be construed as an admission of liability or fact by Seller for any purpose whatsoever.

8.6 Buyer shall execute, acknowledge and deliver to Seller all documents, and shall take all actions reasonably required by Seller from time to time to confirm or affect the matters set forth herein or otherwise to carry out the purposes of this Agreement.

8.7 The representations, warranties, covenants, and agreements of Buyer contained in this Agreement shall survive the Close of Escrow.

8.8 Time is of the essence of this Agreement.

8.9 The captions in this Agreement are for convenience of reference only and shall not be used to define or interpret any provision hereof. Unless the context clearly requires otherwise: (a) the plural and singular shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "include," "includes," and "including" are not intended to be restrictive, and lists following such words shall not be interpreted to be exhaustive or limited to items of the same type as those enumerated; and (f) "days" means calendar days, except if the last day for performance occurs on a Saturday, Sunday, or any legal holiday, then the next succeeding business day shall be the last day for performance.

8.10 This Agreement shall be governed by the laws of the State of California.

8.11 Should any portion, word, clause, phrase, sentence or paragraph of this Agreement is declared void or unenforceable, such portion shall be considered independent and severable from the remainder, and the validity of the remainder shall remain unaffected.

8.12 This Agreement sets forth the entire understanding of Buyer and Seller in connection with the subject matter hereof, and Buyer acknowledges that Seller has made no statement, representation or warranty relating to the Property or any Other Property upon which Buyer has relied or that acted as an inducement for Buyer to enter into this Agreement. Buyer's obligations under this Agreement may not be altered or amended in any respect except by a writing executed by both Buyer and Seller.

IN WITNESS WHEREOF, Seller and Buyer have duly executed this Agreement.

SELLER:

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

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

Print Name: \_\_\_\_\_

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

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

BUYER:

\_\_\_\_\_,  
\_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

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

**ATTACHMENT A**  
**LEGAL DESCRIPTION**



**EXHIBIT D**

**APPROVED SITE MANAGEMENT PLAN**

(June 22, 2012)

(To be attached.)







EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**San Francisco Bay Regional Water Quality Control Board**

July 27, 2012  
File No. 38S0038 (mej)

Pacific Gas and Electric Company  
Environmental Remediation  
Attn: Ms. Zeynep Ungun, PE  
3401 Crow Canyon Road, Room 177C  
San Ramon, CA 94583  
[ZxU1@PGE.com](mailto:ZxU1@PGE.com)

SUBJECT: June 22, 2012, Site Management Plan, Hoe Down Yard, Power Plant, City and County of San Francisco

Dear Ms. Ungun:

Regional Water Board staff (staff) have reviewed the subject Site Management Plan (SMP) prepared by AMEC on behalf of PG&E. The SMP will be incorporated into the environmental deed restriction for the Hoe Down Yard area of the Site. The SMP sets forth health and safety procedures and protocols for the management of residual soil and groundwater pollutants on the property.

Staff had provided comments on an earlier draft of this document which have been adequately addressed in this version. I find the document acceptable and it is hereby approved.

If you have any questions, please contact Mark Johnson of my staff at 510-622-2493, or via e-mail at [mjohnson@waterboards.ca.gov](mailto:mjohnson@waterboards.ca.gov).

Sincerely,

*Chuck Headlee*  
for

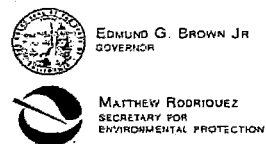
Digitally signed by Chuck Headlee  
Date: 2012.07.27 10:50:55 -07'00'

Bruce H. Wolfe  
Executive Officer

Cc: Mailing List

Mailing List

Mr. Martin Bloes, AMEC, [martybloes@AMEC.com](mailto:martybloes@AMEC.com)  
Ms. Carol Bach, Port of San Francisco, [carol.bach@sfport.com](mailto:carol.bach@sfport.com)  
Mr. Peter Landreth, GenOn Energy, [Peter.Landreth@genon.com](mailto:Peter.Landreth@genon.com)  
Ms. Stephanie Cushing, S.F Public Health, [Stephanie.Cushing@sfdph.org](mailto:Stephanie.Cushing@sfdph.org)  
Ms. Elyse Heilshorn, S.F Public Health, [elyse.heilshorn@sfdph.org](mailto:elyse.heilshorn@sfdph.org)  
Mr. Gordon Jamieson, Haley and Aldrich, [GJamieson@haleyaldrich.com](mailto:GJamieson@haleyaldrich.com)



**San Francisco Bay Regional Water Quality Control Board**

Date: December 6, 2012  
File No. 38S0038 (mej)

Pacific Gas and Electric Company  
Environmental Remediation  
Attn: Ms. Zeynep Ungun, PE  
3401 Crow Canyon Road, Room 177C  
San Ramon, CA 94583  
[ZxU1@PGE.com](mailto:ZxU1@PGE.com)

SUBJECT: No Further Action Status, Hoe Down Yard Area,  
Potrero Power Plant, City and County of San Francisco

Dear Ms. Ungun:

This letter confirms the completion of site investigation and remedial action for the pollutant releases at the Hoe Down Yard (HDY) area of the Potrero Power Plant site.

The HDY area is located on the north-western portion of the of the Potrero Power Plant site at 22<sup>nd</sup> and Illinois Streets. The property is about 3 acres in size and consists of two parcels referred to as Assessor's Block 4110 Lot A on the western portion and Block 4120 Lot 2 on the eastern portion. PG&E currently owns the property and uses it for vehicle parking, equipment storage and temporary stockpiling of soil and concrete.

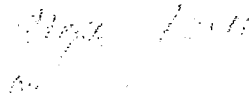
The HDY area has been investigated as part of the larger site-wide investigations, which have been ongoing since the 1990s. Both soil and groundwater have been adequately characterized. Soil was found to contain elevated levels of metals (primarily lead and arsenic), as well as petroleum hydrocarbons. Naturally occurring asbestos was also found ranging in concentrations from 0.5 to 6.3%. The asbestos is likely attributable to the native serpentine bedrock in the area. In addition to the soil impacts, groundwater was found to contain petroleum compounds in the diesel and motor oil range. The attached Case Closure Summary describes in more detail pollution in the HDY and cites relevant documents generated for the property.

An initial screening level human health risk evaluation, based on continued industrial land use, was conducted in 2007. This document also recommended additional data collection activities. In 2011 the document was updated using the most recent data. The results of this evaluation lead to the conclusion that risk reduction/risk management measures would be appropriate for the HDY. An environmental covenant which restricts land uses and an associated site management plan (SMP) have been developed and applied to property to mitigate potential health risks associated with the residual pollution present. With these measures in-place, the site does not pose a significant threat to human health or the environment.

Based upon the available information, including the current industrial land use, compliance with the risk reduction/management measures incorporated in to the environmental covenant and SMP, and with the provision that the information provided to this agency was accurate and representative of site conditions, no further action related to the investigation or remediation of pollutant releases at the subject site is required.

If you have any questions, please contact Mark Johnson of my staff at (510) 622-2493 [e-mail [mjohnson@waterboards.ca.gov](mailto:mjohnson@waterboards.ca.gov)]

Sincerely,



Digitally signed by Stephen Hill  
Date: 2012.12.06 08:35:31  
-08'00'

Bruce H. Wolfe  
Executive Officer

Attachment  
cc w/attach:

Mr. Martin Bloes, AMEC, [mbloes@pivox.com](mailto:mbloes@pivox.com)  
Mr. Jay Ach, Port of San Francisco, [Jay.Ach@sfport.com](mailto:Jay.Ach@sfport.com)  
Ms. Carol Bach, Port of San Francisco, [carol.bach@sfport.com](mailto:carol.bach@sfport.com)  
Mr. Darrell Klingman, PG&E, [DSK5@pge.com](mailto:DSK5@pge.com)  
Mr. Peter Landreth, GenOn Energy, [Peter.Landreth@genon.com](mailto:Peter.Landreth@genon.com)  
Ms. Stephanie Cushing, S.F Dept. of Public Health, [Stephanie.Cushing@sfdph.org](mailto:Stephanie.Cushing@sfdph.org)  
Ms. Elyse Heilshorn, S.F Dept. of Public Health, [elyse.heilshorn@sfdph.org](mailto:elyse.heilshorn@sfdph.org)  
Mr. Gordon Jamieson, Haley and Aldrich, [GJamieson@haleyaldrich.com](mailto:GJamieson@haleyaldrich.com)

## CLOSURE SUMMARY – SUBSET OF SITE

### I. AGENCY INFORMATION

Date: 12/6/2012

Agency Name: SF Bay Regional Water Quality Control Board	Address: 1515 Clay Street, Suite 1400
City/State/Zip: Oakland, CA 94612	Phone: 510-622-2300
Responsible Staff Person: Mark Johnson	Title: E.G.

### II. SITE INFORMATION

Site Facility Name: Potrero Power Plant, Hoe Down Yard Area, San Francisco				
Site Facility Address: 1201 Illinois Street, San Francisco 22 <sup>nd</sup> Street and Illinois Street, San Francisco				
RB Case No.: 38S0038	Local Case No.: None	Priority: NA		
Responsible Parties (include addresses and phone numbers)				
Pacific Gas and Electric Company (PG&E) 3401 Crow Canyon Road, Room 177C, San Ramon, CA 94583 Attn: Ms. Zeynep Ungun ZxU1@PGE.com				
Tank No.	Size in Gallons	Contents	Closed In—Place/Removed?	Date
None				

### III. RELEASE AND SITE CHARACTERIZATION INFORMATION

Cause and Type of Release: Unknown		
Site characterization complete? Yes	Date Approved by Oversight Agency: 2012	
Monitoring wells installed? Temporary Only	Number: 3	Proper screened interval? yes
Highest GW Depth Below Ground Surface: 12 feet	Lowest Depth: 12 feet	Flow Direction: not measured
Most Sensitive Current Use: Industrial		
Most Sensitive Potential Use and Probability of Use Industrial		
Are drinking water wells affected? No	Aquifer Name: Downtown Basin	

Is surface water affected? No		Nearest surface water name: S.F. Bay							
Off-Site Beneficial Use Impacts (Addresses/Locations): None									
Report(s) on file? Yes				Where is report(s) filed? Water Board/Geotracker					
TREATMENT AND DISPOSAL OF AFFECTED MATERIAL									
Material	Amount (Include Units)		Action (Treatment or Disposal w/Destination)				Date		
Tanks	None								
Piping	None								
Free Product	0								
Soil	0								
Groundwater	0								
Barrels	0								
MAXIMUM DOCUMENTED POLLUTANT CONCENTRATIONS—BEFORE AND AFTER CLEANUP									
POLLUTANT	Soil (ppm)		Water (ppb)		POLLUTANT	Soil (ppm)		Water (ppb)	
	Before	After	Before	After		Before	After	Before	After
Arsenic	530	530							
Lead	460	460							
TEPH	7,800	7,800							
TPHd			13,000	13,000					
TPHmo			5,300	5,300					
<b>Comments (Depth of Remediation, etc.):</b>									
Remediation was not required based on current land use. Should land use change, remedial measures for metals impacted soil may be necessary.									

**IV. CLOSURE**

Does completed corrective action protect existing beneficial uses per the Regional Board Basin Plan? Yes		
Does completed corrective action protect potential beneficial uses per the Regional Board Basin Plan? Yes		
Does corrective action protect public health for current land use? Yes		
Site Management Requirements: Site Management Plan and Associated Environmental Covenant and Deed Restriction have been applied to the property.		
Monitoring Wells Decommissioned: NA	Number Decommissioned: NA	Number Retained: NA

List Enforcement Actions Taken: None
List Enforcement Actions Rescinded: None

**V. TECHNICAL REPORTS, CORRESPONDENCE, ETC., THAT THIS CLOSURE RECOMMENDATION WAS BASED UPON**

Environmental Covenant and Deed Restriction	October 2012
Site Management Plan, Hoe Down Yard, AMEC	June 2012
Updated Screening-Level Human health Risk Evaluation, Hoe Down Yard, AMEC	October 2011
Potrero Power Plant Site-Benchmark Screening for Human Health, HDY, Earthrisk, Inc.	October 2007 .
Report of Results-Additional Soil Investigation, Hoe Down yard, AMEC	April 2011

**VI. ADDITIONAL COMMENTS, DATA, ETC.**

The HDY in its current use, with the controls set forth in the environmental covenant and associated SMP, does not pose a significant threat to human health or the environment. Water Board staff understand there is an interest to potentially incorporate this piece of property into the Pier 70 redevelopment project. Should this occur and depending on the proposed future use of the HDY property, an addition risk evaluation may be warranted. Pending the results of this risk evaluation, additional risk management measures or active remediation may be necessary. An appropriate variance to the environmental covenant may also be necessary for a change in use.

This document and the related CASE CLOSURE LETTER shall be retained by the lead agency as part of the official site file.





DRAFT - FINAL



**SITE MANAGEMENT PLAN**

Hoe Down Yard  
22nd Street and Illinois Street  
San Francisco, California

*Prepared for:*

**Pacific Gas & Electric, San Ramon, California**

*Prepared by:*

**AMEC, Oakland, California**

June 22, 2012.

Project OD11161110.00006



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**ACRONYMS AND ABBREVIATIONS**

AB2061	Assembly Bill 2061
AST	above-ground storage tank
BAAQMD	Bay Area Air Quality Management District
bgs	below ground surface
BMPs	best management practices
Cal-EPA	California Environmental Protection Agency
Cal-OSHA	California Occupational Safety and Health Administration
CARB	California Air Resources Board
CCR	California Code of Regulations
COC	Chemical of concern
DTSC	Department of Toxic Substances Control
EFS	Environmental Field Specialist
GC	General Construction Yard
GenOn	GenOn Potrero, LLC
HDY	Hoe Down Yard
HEPA	high efficiency particulate air
HHRE	Human Health Risk Evaluation
IEA	Initial exposure assessment
LUC	Land Use Covenant
mg/kg	milligrams per kilogram
NEA	Negative Exposure Assessment
NOA	naturally occurring asbestos
NPDES	National Pollution Discharge Elimination System
OSHA	Occupational Safety and Health Administration
PAH	polynuclear aromatic hydrocarbon
PCBs	polychlorinated biphenyls
POTW	publicly owned treatment works
PG&E	Pacific Gas and Electric Company
PPE	personal protective equipment
PPP	Potrero Power Plant
QSD	qualified SWPPP developer
QSP	qualified SWPPP practitioner
SFDPH	City and County of San Francisco Department of Public Health
SMP	Site Management Plan
SVOCs	semi-volatile organic compounds
SWPPP	Storm Water Pollution Prevention Plan
TEPH	total extractable petroleum hydrocarbons
TEPHd	total extractable petroleum hydrocarbons quantified as diesel
TEPHmo	total extractable petroleum hydrocarbons quantified as motor oil
USEPA	Environmental Protection Agency
VOCs	volatile organic compounds
Water Board	San Francisco Bay Regional Water Quality Control Board
µg/L	micrograms per liter



**SITE MANAGEMENT PLAN**  
Hoe Down Yard  
22nd Street and Illinois Street  
San Francisco, California

**1.0 INTRODUCTION**

This Site Management Plan (SMP) for the Hoe Down Yard (HDY), located at the intersection of 22nd and Illinois Streets in San Francisco, California (the site). It provides procedures for protection of human health and the environment during routine site maintenance/construction activities where worker exposure to environmentally impacted soil and groundwater is possible.

Terms used in this SMP include the following:

- Owner – current property owner/leaseholder at any given time. The site is currently owned and operated by Pacific Gas and Electric Company (PG&E).
- Contractor – party conducting on-site activities as engaged by the Owner or other parties.
- Engineer/Consultant – current engineer/consultant engaged by the Owner to assist in implementing this SMP. This can also include specific PG&E employees, such as the Environmental Field Specialist (EFS).

PG&E workers and/or Contractor(s) shall be responsible for adhering to this SMP and maintaining job and site safety. Each Contractor also is responsible for providing a copy of the SMP to its subcontractors.

**1.1 OBJECTIVES**

Based upon a review of site conditions, the following specific objectives were developed to manage the presence of residual chemicals in site soil and groundwater:

- To present guidelines for appropriate health and safety precautions for on-site construction or maintenance workers who may access soil that could contain residual chemicals.
- To maintain site security measures to prevent unauthorized public access to the site.
- To present procedures for short-term (i.e., during maintenance and construction activities) management of the residual constituents present in soil and groundwater at the site.
- To present procedures for long-term management (i.e., during ongoing site operations) of the residual constituents at the site.



Sections 2.0 through 4.0 provide the site background information, environmental conditions, and regulatory status and requirements, respectively. Sections 5.0 through 8.0 address the above objectives and Section 9.0 describes the how the SMP should be administered.

## 2.0 BACKGROUND

This section describes the HDY, its setting, and history pertinent to current environmental conditions.

### 2.1 SITE DESCRIPTION AND CURRENT USE

The HDY is approximately 3 acres and is bounded to the south by 22nd Street and PG&E's Switchyard/GC Yard, to the east and north by automobile and equipment storage located on the Port of San Francisco's Pier 70 property (i.e., SF Auto Return), and to the west by Illinois Street. The HDY consists of two parcels of land; Assessors Block 4110 Lot 8A to the west and Block 4120 Lot 2 to the east (Figure 2). These parcels are separated by a north-south trending "paper street" (i.e., undeveloped) Michigan Street<sup>1</sup>, which is the east-west boundary of the 1851 shoreline as described in the City and County of San Francisco's Article 22A (i.e., Maher) Ordinance<sup>2</sup>. Although the western parcel is formally outside of the current Article 22A boundary, previous environmental investigation activities conducted on both parcels were performed in accordance with the requirements of Article 22A.

The western parcel (Assessor's Block 4110, Lot 8A) currently is used by PG&E for vehicle parking and equipment storage. A settling area for drilling mud (i.e., bentonite-water mixture) is located in the northeastern portion of this parcel. The drilling mud is used by PG&E maintenance crews for off-site utility work and is periodically removed from the settling area and disposed of as a non-hazardous waste. The eastern parcel (Assessor's Block 4120, Lot 2) currently is used for the temporary stockpiling of broken concrete slabs, mixed soil, sand, gravel, and asphalt generated during subsurface utility maintenance operations conducted throughout San Francisco by PG&E. This SMP is not intended to address the handling and management of the soil or debris imported to the site as part of off-site utility maintenance operations.

### 2.2 SITE HISTORY

The site has been occupied since about 1886, with the site being initially used for stables. Historical industrial operations began by about 1910 and appear to have been primarily limited to the operation of fuel oil aboveground storage tanks (ASTs) located in the southern portion of the western parcel. The ASTs ranged in capacity from 30,000 to 40,000 barrels and were

<sup>1</sup> The term "paper street" refers to a street that is referenced on a map (e.g., parcel map) but does not physically exist.

<sup>2</sup> Article 22 (the "Maher Ordinance") specifies certain soil sampling and reporting guidelines to be followed for construction projects involving disturbance of 50 cubic yards or more of soil for sites located within the Maher area, as on Maher maps maintained by the San Francisco Department of Public Health.



constructed on concrete slabs, which may still be present below grade. An oil heater house was located adjacent to the northern tanks and associated pipelines were located between the ASTs and adjacent to the western perimeter. The ASTs were removed, along with associated aboveground piping, by 1996. A more comprehensive description of historical site use is presented in Geomatrix Consultant's 2003 Preliminary Site Assessment (Geomatrix, 2003). Historical and current site features are shown on Figure 2.

### 2.3 GEOLOGY AND HYDROGEOLOGY

The subsurface beneath the HDY consists of shallow fill material, likely placed in the 1800 and 1900s, underlain by weathered serpentinite bedrock of the Franciscan Group. The fill material generally is present to depths between 4 and 6 feet below ground surface (bgs), but can be encountered in localized areas as shallow as 1 foot bgs or as deep as 14 feet bgs (Geomatrix, 2006; AMEC, 2008, 2011a). The fill is dominated by clayey sand with varying amounts of gravel; lenses of poorly graded sand and gravel also are present. The fill material is generally underlain by weathered serpentinite bedrock of the Franciscan Group to the total depth investigated (i.e., 5 to 18 feet bgs). Clasts of serpentinite bedrock also are present within the fill in some areas. A bedrock ridge outcrop is present in the central portion of the site.

No permanent groundwater monitoring wells have been installed in the HDY; however, depth to groundwater was measured at approximately 12 feet bgs in the western portion of the site in temporary boreholes advanced previously for grab groundwater sampling (Geomatrix, 2006). It was unclear, however, at what depth groundwater infiltrated the boreholes (i.e., shallow perched groundwater may have entered the boreholes at a depth shallower than 12 feet bgs and accumulated in the borehole). Groundwater was not observed in borings advanced to bedrock in the eastern portion of the site.

### 3.0 ENVIRONMENTAL CONDITIONS

Soil samples collected as part of previous environmental investigations within the HDY have contained chemicals of concern (COCs) such as metals (e.g., lead and arsenic). A select number of samples also were analyzed for asbestos, which is associated with naturally occurring minerals in the soil (i.e., naturally occurring asbestos [NOA]). Groundwater samples have contained petroleum hydrocarbons. A summary of the current environmental conditions at the site is included in the sections below. A screening-level human health risk evaluation (HHRE) for the HDY, recently updated in 2011 (AMEC, 2011b), was prepared using site data to evaluate the potential adverse health effects that may be associated with cumulative exposure to COCs detected in site soil and groundwater. Based on existing industrial site land use and site conditions, the results of the updated HHRE indicate that long-term risk reduction and/or risk management measures are warranted to reduce potential exposures to arsenic in soil (AMEC, 2011b). Specifically, given the lack of an identified source of arsenic and the heterogeneous nature of arsenic detected in shallow fill, this SMP was recommended to



provide guidance on limiting potential exposures and for the proper handling of arsenic-impacted soil.

The sections below summarize environmental conditions at the HDY pertinent to protection of human health during routine site maintenance and/or construction activities where worker exposure to impacted soil and groundwater is possible.

### 3.1 SOIL AND GROUNDWATER QUALITY

Three subsurface investigations have been conducted at the site (Geomatrix, 2006; AMEC, 2008, 2011a)<sup>3</sup>. During the investigations, 110 soil and 3 groundwater samples were collected from 37 locations (HDS-1 through HDS-34, and HDW-4 through HDW-6) at the HDY. Soil and groundwater samples were analyzed for one or more of the following: total extractable petroleum hydrocarbons quantified as diesel and motor oil (TEPHd and TEPHmo, respectively), volatile organic compounds (VOCs), metals, semi-volatile organic compounds (SVOCs) including phenols and polynuclear aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), pesticides, asbestos, and cyanide. Tables summarizing analytical results presented in the HHRE are included in Appendix A; sampling locations are shown on Figure A-1.

#### 3.1.1 Chemical Constituents in Soil

Pesticides, PCBs, and cyanide have not been detected in any soil samples. Some soil samples contain low concentrations of VOCs and SVOCs that do not exceed any applicable human-health screening criteria (human health screening criteria are described in the updated HHRE [AMEC, 2011b]). Metals are generally detected at concentrations below applicable screening criteria, with the exception of arsenic and lead. Arsenic, which was detected at concentrations up to 530 milligrams per kilogram (mg/kg), exceeded both its screening criteria and site-specific background concentration of 11.5 mg/kg (Earth Risk, 2009) in 17 samples, mainly in the northwestern portion of the site. Lead, which was detected at concentrations up to 460 mg/kg, exceeded its screening criteria in only one sample; the representative concentration of lead (defined as the 95% upper confidence limit) for the site was below the screening criteria. Concentrations of TEPH exceeded their screening criteria in four samples; with the maximum concentration being 7,800 mg/kg of TEPHmo. The area of arsenic affected soil is shown on Figure 2. The locations where lead and TEPH criteria were exceeded are co-located with exceedences of arsenic.

Arsenic is the primary COC in soil; sample locations where arsenic concentrations exceeded the site-specific background concentrations of 11.5 mg/kg are shown on Figure A-2. As shown

<sup>3</sup> One soil sample was also collected at the HDY in March 1991 as part of an area-wide investigation conducted by Ecology & Environment, Inc.





on Figure 3, the area of arsenic affected soil is primarily limited to the northwestern corner of the HDY within a 140 by 140 foot area.

### **3.1.2 Naturally-Occurring Asbestos in Soil**

The presence of NOA is often associated with serpentinite rock, which can be encountered at the site either as serpentine bedrock of the Franciscan Formation that outcrops at the site or weathered serpentine bedrock used historically in site fill. Serpentinite rock is apple green, brown, reddish brown and gray to black and has a waxy or shiny appearance. The usual appearance of serpentine is fine grain and compact, but it can be flaky or fibrous. Serpentine rock is mostly comprised of three mineral types, one of which is chrysotile, the most common form of NOA. Asbestos-containing material may be considered hazardous by the Department of Toxic Substances Control (DTSC) if it is friable (can be reduced to powder or dust under hand pressure when dry) and contains more than 1% of asbestos fibers.

A total of 7 soil samples have been collected from different boring locations and analyzed for asbestos. All of the soil samples analyzed for asbestos contained detectable asbestos, from 0.5% up to 6.3%. It is likely that the asbestos in the site soil is naturally occurring and associated with weathered serpentine bedrock. These asbestos fibers may be considered friable if the soil were disturbed. Given that the NOA is associated with the serpentinite rock and fill, it should be assumed that NOA can be encountered throughout the entire HDY.

### **3.1.3 Chemicals in Groundwater**

COCs in groundwater either were not detected or were present at less than screening criteria, with the exception of TEPHd and TEPHmo. TEPHd and TEPHmo were detected at maximum concentrations of 13,000 and 5,300 micrograms per liter ( $\mu\text{g/L}$ ), respectively. Groundwater was primarily encountered within the western parcel of the HDY.

## **4.0 REGULATORY STATUS AND GENERAL REQUIREMENTS**

The San Francisco Bay Regional Water Quality Control Board (Water Board) is the designated lead agency for site remediation. The regulatory working group for the site includes the City and County of San Francisco Department of Public Health (SFDPH), and the California Department of Fish and Game.

### **4.1 REGULATORY REQUIREMENTS**

Earthwork activities may be subject to federal, state, and local laws and regulations, including those promulgated by U.S. Environmental Protection Agency (USEPA), California Environmental Protection Agency (Cal-EPA), the Bay Area Air Quality Management District (BAAQMD), the City and County of San Francisco, and the Occupational Safety and Health Administration (OSHA). These laws address issues such as dust generation, hazardous waste, storm water, health and safety, Proposition 65, and community right-to-know. While some of these issues are discussed in this SMP, it is the responsibility of the PG&E employee



or Contractor performing work that may involve contact with impacted site soils to ensure worker safety and to comply with currently applicable laws and regulations.

**4.2 NOTIFICATIONS**

The following PG&E personnel should be the primary point of contact regarding environmental conditions and should be contacted prior to any intrusive work.

Contact	Telephone No.
PG&E Environmental Field Specialist (EFS)	Jennifer Hope 415-244-8236
PG&E Environmental Hotline	415-244-8236

Notifications should be made to the appropriate regulatory agency prior to beginning intrusive work. These agencies could include the following:

- SFDPH should be notified prior to any intrusive work involving 50 cubic yards or more of soil in accordance with the Article 22A of the San Francisco Health Code (Maher Ordinance);
- SFDPH should be notified prior to any intrusive work that could generate dust in accordance with the Article 22B of the San Francisco Health Code;
- The BAAQMD should be notified regarding dust mitigation measures for intrusive activities disturbing greater than 1.0 acres in areas containing NOA in accordance with Title 17 of the California Code of Regulations (CCR), Section 93105 (17 CCR § 93105); and
- The Water Board should be notified if water management activities (such as excavation dewatering or storm water management) are required.

**5.0 GUIDELINES FOR HEALTH AND SAFETY DURING CONSTRUCTION/ MAINTENANCE ACTIVITIES**

The health and safety of on-site PG&E employees is the responsibility of the PG&E project manager. Contractors are responsible for their own health and safety for contractor employees engaged in work at the HDY. As such, preparation of a Health and Safety Plan covering construction and maintenance activities is the responsibility of the PG&E project manager or contractor at the site during such activities. All applicable federal, state, and local regulations and codes relating to health and safety shall be adhered to, including all sections of California Occupational Safety and Health Administration (Cal-OSHA) regulations contained in CCR Title 8 as they apply to the site activities.

Guidelines provided in this SMP apply only to the classes of chemicals listed above and does NOT address health and safety issues related to any other hazards or activities at the site (including, but not limited to, activities related to electrical work, trenching and shoring and weather-related hazards). These guidelines represent minimum health and safety measures



related to the chemical impacts addressed herein. Additional measures, especially for electrical related activities, may be implemented at the discretion of the PG&E EFS and/or Contractor, based on the specific construction/maintenance tasks to be performed.

#### **5.1 PERSONAL PROTECTIVE EQUIPMENT**

On-site workers who will or have the potential to be in contact with soil and/or groundwater in the HDY area shall use the following personal protective equipment (PPE) to minimize potential exposures:

- work boots;
- gloves (washable or disposable);
- long sleeved shirts;
- hard hat; and
- safety glasses.

The PPE required may be upgraded (e.g., use of a respirator) in the event that site conditions change. Potential events that may require an upgrade of PPE may include:

- identification of additional chemicals or an increase in chemical concentrations in soil and/or groundwater during any future sampling conducted by PG&E and/or its contractors;
- exposure monitoring indicating the need to upgrade PPE; and
- temperature or individual medical conditions limiting the effectiveness of PPE.

#### **5.2 DECONTAMINATION PROCEDURES**

Contractors engaged in significant soil-disturbing activities shall provide an area for personnel decontamination adjacent to the work area. This area should include boot washing and hand washing facilities, toilet facilities, and receptacles for used protective clothing.

Decontamination procedures for on-site workers wearing PPE may include:

- wash boots and gloves (if washable);
- remove protective gloves and place in plastic bags for disposal (if disposable);
- wash hands and face with soap and water before eating, drinking, using tobacco, or leaving the work area; and
- clean respirators, if used, and dry as needed, and place in sealed plastic bags with individual identification.

Equipment contacting soil will require decontamination prior to leaving the active area due to the possible presence of NOA and other potential contaminants. Decontamination requirements will vary depending on the type of equipment and nature and condition of subsurface material encountered. For dry soils, dry removal of dirt from tires and bucket or blade using brooms should be performed, at a minimum (see Section 6.0 for a more



comprehensive discussion on soil/dust management measures). For equipment encountering wet soils or groundwater, cleaning with a steam cleaner or pressure washer should be performed on the portions of the equipment in contact with the wet soil or groundwater. Equipment decontamination should be performed in a contained area with the means to contain and collect decontamination rinseate. Decontamination water, if generated, should be containerized, sampled, and properly recycled/disposed.

**5.3 SPILL RESPONSE PROCEDURES**

In the event of a release of hazardous material or waste to the surface during maintenance or construction activities, such as a fuel release associated with construction equipment, the following spill response procedures will be implemented:

1. Evacuate all on-site personnel to a designated assembly area in an upwind direction until the site safety officer determines that it is safe for work to resume.
2. Contain the spill, if it is possible and it can be performed safely.
3. Immediately notify the appropriate emergency contacts from Section 5.4 (below), along with the PG&E EFS, who will subsequently notify the appropriate regulatory agency(s).
4. Initiate containment/cleanup per project spill response plan.

**5.4 EMERGENCY CONTACTS**

Contact	Telephone No.
Police, Fire, Ambulance (Land Line)	911
Police, Fire, Ambulance (Mobile phone)	911
Emergency Contact, PG&E after hours  Emergency Contact, PG&E EFS	1-800-874-4043  Jennifer Hope 415-244-8236

**6.0 DUST MANAGEMENT MEASURES**

Construction and/or maintenance workers at the site may need to access soil in areas where residual chemicals (i.e., arsenic and hydrocarbons), along with NOA, may be present. The dust management measures provided herein is designed to minimize potential exposures to residual chemicals and NOA in dust.



Because NOA associated with weathered serpentine bedrock is present in site soil, prior to beginning work, the PG&E EFS should be contacted regarding the BAAQMD requirements for working in NOA soils. In general, work disturbing less than 1.0 acre of soil requires specific work practices, as discussed below under dust control, whereas work disturbing greater than 1.0 acre require the preparation and approval of a BAAQMD Asbestos Dust Mitigation Plan prior to starting work. Additionally, the SFDPH is to be notified of construction projects that have the potential to generate dust as per Article 22B.

### 6.1 DUST CONTROL

Engineering controls are the preferred methods of controlling on-site and off-site exposures to dust generated through construction activities. Currently, the majority of the HDY area is covered with gravel and hard-packed dirt, which minimizes dust generation during periods of time when no intrusive activities are occurring. The generation of dust during intrusive activities shall be minimized by the following acceptable industry practices and the methods offered by the California Air Resources Board (CARB) for control of NOA (17 CCR § 93105):

- Unpaved areas subject to vehicle traffic must be stabilized by adequate wetting, treatment with a chemical dust suppressant or by covering with material that contains less than 0.25% asbestos to prevent visible emissions from crossing the property line.
- It is recommended that vehicles and equipment should travel no more than 10 mph to prevent vehicles from generating visible dust which crosses the property line<sup>4</sup>.
- Prior to any ground disturbance, sufficient water must be applied to the area to be disturbed to prevent visible dust from crossing the property line.
- Stockpiles of soil and disturbed areas not subject to vehicular traffic must be stabilized by being kept adequately wetted, treated with a chemical dust suppressant, or covered by a tarp or material that contains less than 0.25% asbestos when material is not being added to or removed from the pile.
- Equipment must be washed down or subjected to one or more of the following track-out prevention measures before being moved from the property onto a paved public road;
  - a gravel pad designed using good engineering practices to clean the tires of exiting vehicles;
  - a tire shaker;
  - a wheel-wash system;
  - pavement extending for not less than fifty (50) consecutive feet into the site from the intersection with the paved public road; or
  - any other measure as effective as the measures listed above..

<sup>4</sup> CARB recommends that the speed of vehicles and equipment traveling across unpaved areas must be no more than 15 miles per hour.



- Activities must be conducted so that no track-out from any construction project is visible on any paved roadway open to the public. Visible track-out on a paved or public road must be cleaned within 24 hours using wet sweeping or a high efficiency particulate air (HEPA) filter-equipped vacuum device.
- Equipment and operations must not cause the emission of any visible dust that crosses the property line.

Any load-out of soil or debris from the site must comply with the following procedures:

- Trucks are maintained such that no spillage can occur from holes or other openings in cargo compartments.

Procedures to control emission of dust from disturbed surfaces after completion of intrusive site activities may include the following:

- Establishment of a vegetative cover;
- Placement of at least three inches of non-asbestos-containing material;
- Paving; or
- Any other measures deemed sufficient to prevent wind speeds of 10 miles per hour or greater from causing visible dust emissions.

## 6.2 DUST MONITORING

Chemicals that may be present in site soil include arsenic, lead, and NOA. Cal-OSHA requires an exposure assessment for activities that will disturb materials containing lead and asbestos, including NOA. The purpose of the assessment is to evaluate the potential for specific site activities (e.g., grading or trenching) to result in worker exposures to NOA. The assessment can be completed as an Initial Exposure Assessment (IEA) prior to the start of work or a Negative Exposure Assessment (NEA) which demonstrates that employee exposures will be below the 8-hour time-weighted average criteria. The NEA can be accomplished using either the results of monitoring of a similar job in the same area performed in the last 12 months (if the monitoring were performed consistent to requirements for dust monitoring in Appendix B), or the results of initial monitoring (conducted consistent with Appendix B) during the current job. As a result, dust monitoring may be implemented, along with the specific health and safety requirements of the Contractor, based on the scope of the specific site maintenance or construction activities to be conducted. If dust monitoring is implemented, the results of the monitoring should be used to evaluate the effectiveness of on-site dust control measures and determine the need for additional dust control procedures. Guidelines for dust monitoring are provided in Appendix B.

## 7.0 SOIL AND WATER MANAGEMENT PROCEDURES

Soil and groundwater handling procedures to be followed during intrusive site activities are provided below.



## **7.1 GUIDELINES FOR INTRUSIVE SITE ACTIVITIES**

To the extent possible, site soil excavated during construction or site maintenance should be reused, so that removal and disposal of soil to other locations will not be necessary. Handling and management activities for soil and groundwater to be followed during site construction/maintenance activities are outlined below.

### **7.1.1 SOIL HANDLING**

For purposes of this SMP, it is assumed that fill material or site soil may contain general construction waste or potentially wastes associated with historical site operations, along with arsenic and NOA. During any excavation, dust control and monitoring measures in accordance with Cal-OSHA and BAAQMD requirements shall be used when handling soil and fill (see Sections 6.1 and 6.2). Normal dust control measures are also required when handling debris, as site soil will likely be associated with this material. If a NOA containing soil is considered a waste, and the NOA is greater than 1%, the soil must be disposed as a facility licensed to accept friable asbestos containing material. The waste doesn't; however, have to be classified as a hazardous waste unless other factors are contributing (metals, etc.).

### **7.1.2 Soil Stockpiling**

Excavated soil shall be temporarily stockpiled and protected as necessary from the adverse effects of rainfall (runoff) and/or wind (dust). All soil stockpiles shall be watered, as needed, and securely covered with a suitable tarp to prevent wind erosion and dust generation. To limit public access to stockpiled soil, stockpiled soil areas should be fenced or otherwise protected and should be located in a contained area with no direct connection to storm drains or the shoreline. Storm water management practices should be consistent with all applicable rules and regulations, as described in Section 7.1.6.

### **7.1.3 On-Site Reuse of Soil**

Soil encountered during site maintenance activities or other excavation activities shall be stockpiled and evaluated for potential re-use on the site. This evaluation may require additional chemical testing of the material based on the proposed area or depth at which the soil will be placed. The need for additional testing, and the specific testing requirements, such as sampling frequency and chemical analyses, should be determined by the Engineer/Consultant or the PG&E EFS.

Additional testing may include:

- NOA using CARB Method 435
- Metals using EPA Methods 6010/7470

Soil generated from within the area of arsenic impacts, as shown on Figure 3, shall not be reused for any purposes in any other areas of the HDY.



Soil exhibiting physical evidence of environmental impacts (e.g., visibly impacted by hydrocarbons or exhibiting odors) will be segregated for characterization and off-site disposal. If off-site removal of stockpiled material is required, the procedures described in Section 7.1.4 will be implemented.

#### **7.1.4 Off-Site Soil Disposal**

If soil generated during maintenance or construction activities is to be removed from the site, the soil shall be characterized (i.e., tested for the presence of chemical constituents) before being removed, as required by the receiving facility. It is likely that analyses for total and soluble metals, asbestos, PAHs, VOCs, and TPH will be required. Given the presence of metals in the fill at the site, some soil may need to be disposed of at a licensed hazardous waste landfill. Thus, in the absence of prior chemical analyses, it is prudent to assume that soil to be removed from the site could contain elevated levels of total and/or soluble metals or other constituents; that chemical testing of the soil will likely be required, and that special handling may be required.

#### **7.1.5 Excavation Dewatering**

Due to the potential for the presence of TPH in groundwater at the site, the updated HHRE (Earth Risk, 2007) recommended dewatering excavations to limit the dermal contact with site groundwater by construction workers. Preparations shall be made to remove, store, characterize, and properly dispose of standing water from excavations during construction and maintenance trenching activities. Appropriate precautions may include having a temporary storage tank (e.g., Baker tank) on site. Contained water or groundwater can be disposed off-site at an appropriate facility or through other arrangements, such as a prearranged disposal agreement (e.g., with the City and County of San Francisco Publically Owned Treatment Works [POTW]) on-site. Prior to disposal, the water should be tested in accordance with requirements of the receiving facility. In the event that the dewatering effluent is to be disposed to the storm system, a permit (e.g., National Pollution Discharge Elimination System [NPDES]) from the Water Board will likely be required. Specific testing requirements and sampling frequency will be designated in the permit to discharge water.

#### **7.1.6 Storm Water Management**

Storm water pollution controls will be implemented to minimize the erosion and runoff of sediment in storm water, which could include arsenic-affected sediment. Storm water pollution controls at construction sites where the surface area of construction activities are greater than 1 acre in size, or for projects that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required under the General Permit for Discharges of Storm Water Associated with Construction Activity (currently 2009-0009-DWQ as Modified by 2010-0014-DWQ; General Permit). The Construction General Permit requires the that the Storm Water Pollution Prevention Plan (SWPPP) be developed by





Qualified SWPPP Developers (QSDs) and that implementation of the plan be performed by Qualified SWPPP Practitioners (QSPs). As per PG&E Procedure ENV-2201P-01, the PG&E Environmental Operations Storm Water Group shall be contacted regarding the need for PG&E specific requirements, such as erosion and sediment control plans for sites less than 1 acre, along with the use of PG&E's QSDs and QSPs.

Storm water pollution controls shall be implemented by the Contractor(s) and will be based on Best Management Practices (BMPs). Specific practices that will be implemented to reduce the sediment load of storm water runoff from the site include grading the site to prevent storm water from running offsite, installing storm water control devices (earth berms, silt fences, or other barriers) around the perimeter of unpaved portions of the site until construction is completed, and protecting existing catch basins with silt fences or gravel bags. In addition, all contractors will store fuel and chemicals in such a manner that prevents accidental spills from impacting storm water (e.g., within secondary containment).

#### **7.1.7 Site Access and Security**

Vehicle and personnel access to areas where soil will be disturbed shall be controlled. Caution tape, cones, fencing, steel plates, or other measures shall be used to clearly designate the active work area and to prevent access by the public. Stockpiles of excavated soil shall be protected as described in Section 7.1.2 and secured by temporary fences or other means to prevent unauthorized access.

The HDY site is bounded by secure perimeter fencing preventing unauthorized access. Contractors should not damage perimeter fencing. Site perimeter security fencing shall not be altered or removed without the approval of PG&E. Should removal or modification of perimeter fencing be necessary to facilitate construction, a temporary security fencing plan and fencing replacement plan must be developed and approved by the Owner and/or PG&E EFS. The plan shall include details for replacement of perimeter fencing and shall conform to local building codes.

#### **7.2 UNANTICIPATED SUBSURFACE CONDITIONS**

It is possible that unknown, historical subsurface features and structures may remain at the site. If present, these structures or features may be encountered during construction activities. Unanticipated subsurface conditions may include, but are not limited to, the following items:

- Slabs and piping associated with the former ASTs;
- Underground storage tank(s);
- Concrete vault(s);
- Underground piping; or
- Chemical impact that has resulted in visually impacted soil or odors.



Whenever unanticipated conditions are encountered, PG&E workers and/or the Contractor(s) shall stop work in that area, secure the work area, and evaluate the situation before any further action is taken. The PG&E workers and/or contractor shall notify the PG&E EFS if unanticipated surface conditions are encountered; the EFS will be responsible for notifying the appropriate agency, as necessary (see Section 4.2). If visually impacted soil is encountered, it should be removed from the excavation and segregated from other site soil. The removal and segregation of visually impacted soil shall be conducted as not to limit the progress of excavation activities or work flow at the site, if possible. If significant odors are encountered, work should stop immediately and the work area should be covered and secured.

### **7.3 LONG-TERM SOIL MANAGEMENT**

Long-term soil management, including handling, stockpiling, and disposing of soil during future site construction/maintenance activities, shall be consistent with the requirements discussed above. Soil encountered during site construction/maintenance activities should be stockpiled and re-used onsite in accordance with the procedures described in Section 7.1.3. Any soil generated during future construction/maintenance activities to be disposed off-site must be tested as described in Section 7.1.4 prior to removal.

### **8.0 ADMINISTRATION OF THE SITE MANAGEMENT PLAN**

This section discusses responsibilities for managing this SMP and the circumstances under which this SMP may be modified.

#### **8.1 RESPONSIBILITIES**

PG&E shall oversee implementation of this SMP at the site. PG&E workers and/or the Contractor(s) shall be responsible for adhering to this SMP, following project specifications, and maintaining job and site safety. Each Contractor also is responsible for providing a copy of the SMP to its subcontractors. PG&E and/or its representative may observe construction activities, but are not responsible for directing/supervising the contractor's operations/work.

#### **8.2 MODIFICATIONS OF SITE MANAGEMENT PLAN**

This SMP is based on current conditions at the property. It may be necessary to modify this SMP from time to time for any of several reasons, including:

- change in property use;
- change in understanding of environmental conditions (e.g., newly identified chemicals);
- intrusive activity that is not addressed by this SMP; or
- new legal or regulatory requirements.



### **8.3 DOCUMENTATION**

Records should be kept to document the off-site removal of soil during construction activities and as part of maintenance activities, and records demonstrating compliance with BAAQMD requirements for dust control for site disturbance of soils containing NOA must be maintained onsite for seven years. Additionally, any previously unidentified environmental issues encountered during construction activities should be documented, and also copies should be kept of any exposure assessments performed and their supporting analyses to support similar future work activities. A copy of this SMP should be present at the site during construction activities. Additionally, a copy should be kept in the EFS's office as a reference for future maintenance activities.

### **9.0 SCOPE, REPRESENTATIONS, AND LIMITATIONS**

This SMP was developed exclusively to manage worker exposure to residual chemicals (i.e., arsenic) and NOA in soil and groundwater at the HDY during construction/maintenance activities. This SMP does not address issues related to other chemicals or media that may be encountered during construction projects including, but not limited to, demolition and construction debris, asphalt, concrete, asbestos-containing building materials, lead-based paint, or any chemicals brought onsite by construction workers. If such materials are encountered during a construction project, each contractor is responsible for complying with all applicable laws pertaining to the handling and disposal of these materials.

This SMP is based on current known site conditions and current laws, policies, and regulations. No representation is made to any present or future developer or owner of the site or portions of the site with respect to future site conditions, other than those specifically identified within this report.



## 10.0 REFERENCES

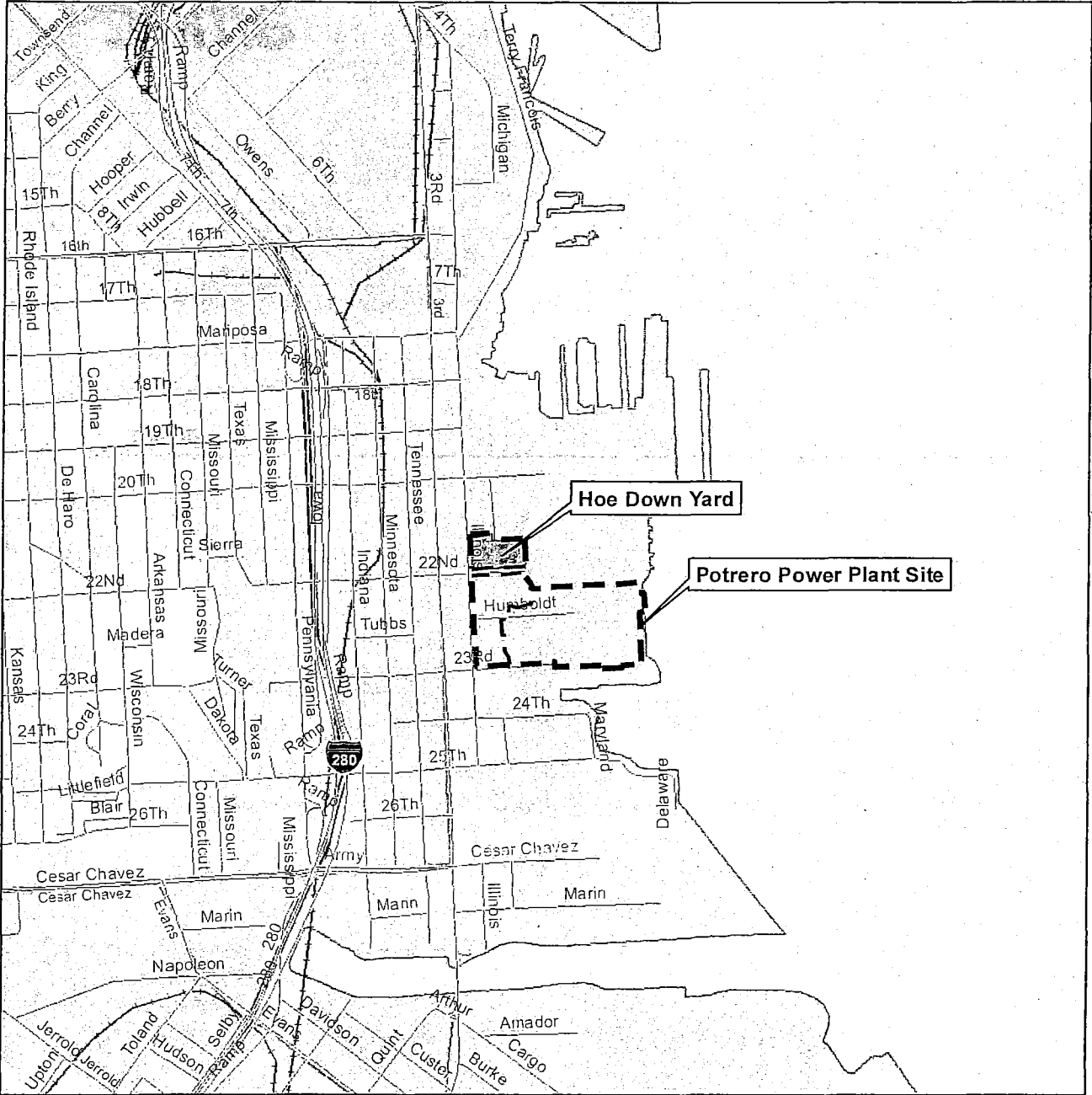
- AMEC Geomatrix, Inc. (AMEC), 2008, Report of Results, Additional Soil Investigation, Hoe Down Yard, PG&E Potrero Power Plant Site, 22nd Street at Illinois Street, San Francisco, California, July.
- AMEC, 2011a, Report of Results – Additional Soil Investigation, Hoe Down Yard, 22nd Street at Illinois Street, San Francisco, California, April.
- AMEC, 2011b, Updated Screening-Level Human Health Risk Evaluation, Hoe Down Yard, 22nd Street and Illinois Street, San Francisco, California, August.
- California Code of Regulations, Title 8, Subchapter 4, Construction Safety Orders, Article 4. Dust Fumes, Mists, Vapors and Gases. §1529 Asbestos.
- California Code of Regulations, Title 17, § 93105. Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying and Surface Mining Operations.
- California Code of Regulations, Title 17, § 93106. Asbestos Airborne Toxic Control Measure for Surfacing Applications.
- California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, Integrated Risk Assessment Section, 2004, Human-Exposure-Based Screening Numbers Developed to Aid Estimation of Cleanup Costs for Contaminated Soil, November (January 2005 Revision).
- California Health & Safety Code. Division 20. Miscellaneous Health & Safety Provisions. Chapter 6.5. Hazardous Waste Control. Article 4 Listings. § 225143.14
- EarthRisk, Inc., 2007, Benchmark Screening for Human Health, Hoe Down Yard, 22nd Street at Illinois Street, San Francisco, California, October.
- EarthRisk, Inc., 2009, Background Concentrations for Arsenic in Soil, Hoe Down Yard, Potrero Power Plant, April.
- Geomatrix Consultants, Inc. (Geomatrix), 2003, Preliminary Site Assessment, Hoe Down Yard, San Francisco, California, November.
- Geomatrix, 2006, Report of Results – Soil and Groundwater Investigation, Hoe Down Yard, San Francisco, California, September.
- Regional Water Quality Control Board (Water Board), 2003 (Updated February 2005), Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater, Volume 2: Background Documentation for the Development of Tier 1 Environmental Screening Levels, Interim Final, July.
- US Code, Title 42. Public Health and Welfare. Chapter 82. Subchapter 111. § 6921. Identification and Listing of Hazardous Waste.



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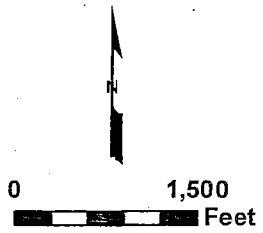
**FIGURES**

DRAFT - FINAL



Basemap from StreetMapPro 2007 (Environmental Systems Research Institute, Inc. [ESRI], 2007).

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**SITE LOCATION MAP**  
 Potrero Power Plant Site and Hoe Down Yard  
 22nd Street and Illinois Street  
 San Francisco, California

By: MB	Date: 06/22/2012	Project No. OD1116110.6
<b>amec</b>		Figure <b>1</b>



Explanation

- Approximate Hoe Down Yard boundary
- ▨ Arsenic-affected area

Notes:

1. References: PG&E drawing #480719, 1926; Sanborn Fire Insurance Map, 1914; Camp Dresser & McKee, Phase I Site Assessment, 1997; and Ecology and Environment, Preliminary Endangerment Assessment, 1991.
2. Former boring locations surveyed March 2006; other site features not surveyed.

ARSENIC-AFFECTED AREA  
 Hoe Down Yard  
 22nd Street at Illinois Street  
 San Francisco, California

By: MC | Date: 06/22/2012 | Project No. OD11161110.6



Figure 2



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**APPENDIX A**

Analytical Data Summary Tables and Figures





## APPENDIX A

### TABLES

Table A-1	Analytical Results for Soil samples – Arsenic
Table A-2	Soil Sample Analytical Results – Other Metals
Table A-3	Soil Sample Analytical Results – TEPH and VOCs
Table A-4	Soil Sample Analytical Results – SVOCs
Table A-5	Soil Sample Analytical Results – PCBs and Pesticides
Table A-6	Soil Sample Analytical Results – Naturally Occurring Asbestos and Total Cyanide
Table A-7	Groundwater Analytical Results - Metals
Table A-8	Groundwater Sample Analytical Results – Organic Compounds
Table A-9	Groundwater Sample Analytical Results - Cyanide

### FIGURES

Figure A-1	Historical Sampling Locations
Figure A-2	Soil Sample Analytical Results - Arsenic



TABLE A-1

**ANALYTICAL RESULTS FOR SOIL SAMPLES - ARSENIC<sup>1</sup>**

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Date	Sample Depth (feet bgs)	Soil Type	Arsenic
HDS-1	2/3/06	1.0	Fill	2.20 <sup>2</sup>
		5.0	Fill (at bedrock interface)	2.30
HDS-2	2/3/06	1.0	Fill	2.17
		5.0	Bedrock	<0.75
HDS-3	2/3/06	1.0	Fill	2.98
		5.0	Fill (at bedrock interface)	345 <sup>3</sup>
HDS-4	2/3/06	1.0	Fill	3.29
		5.0	Fill	1.17
		7.0	Bedrock	98.5
HDS-5	2/2/06	1.5	Fill	4.89
		5.7	Fill	8.47
HDS-6	2/2/06	1.2	Fill	4.75
		5.0	Fill	4.39
		7.0	Bedrock	11.3
HDS-7	2/2/06	1.0	Fill	4.59
		6.0	Bedrock	5.53
HDS-8	2/2/06	1.2	Fill	9.23
		5.0	Fill	11.0
		6.8	Bedrock	10.1
HDS-9	2/3/06	1.2	Fill	3.72
		5.0	Bedrock	2.69
HDW-4	2/2/06	7.5	Fill	<0.75
HDS-10	5/8/08	2.5	Fill	7.7
		4.5	Fill (at bedrock interface)	5.4
		7.5	Bedrock	< 0.4
HDS-11	5/8/08	3.5	Fill	1.9
		5.5	Fill (at bedrock interface)	28
		12.0	Bedrock	< 0.4
HDS-12	5/8/08	2.0	Fill	2.8
		3.4	Fill (at bedrock interface)	21
		9.8	Bedrock	< 0.4
HDS-13	5/8/08	2.0	Fill	3.0
		4.7	Fill (at bedrock interface)	110
HDS-14	5/8/08	7.0	Bedrock	< 0.4
		2.5	Fill	2.6
		5.0	Fill (at bedrock interface)	72
HDS-15	5/8/08	8.0	Bedrock	< 0.4
		3.5	Fill	3.1
		5.5	Fill (at bedrock interface)	3.9
HDS-16	5/8/08	10.2	Bedrock	< 0.4
		1.5	Fill	2.8
		3.2	Fill	6.4
HDS-17	7/20/10	10.0	Bedrock	< 0.4
		1.5	Fill	4.0
		4.0	Fill (at bedrock interface)	16
		6.0	Bedrock	<0.36



TABLE A-1

**ANALYTICAL RESULTS FOR SOIL SAMPLES - ARSENIC<sup>1</sup>**

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Date	Sample Depth (feet bgs)	Soil Type	Arsenic
HDS-18	7/20/10	1.5	Fill	4.3
		4.0	Fill (at bedrock interface)	6.6
		6.0	Bedrock	<0.35
HDS-19	7/20/10	1.7	Fill	150
		2.8	Fill (at bedrock interface)	530
		4.8	Bedrock	3.5 J <sup>4</sup>
HDS-20	7/20/10	1.5	Fill	3.8 J
		3.0	Fill	3.6 J
		5.5	Fill (at bedrock interface)	40
		7.5	Bedrock	<0.34
HDS-21	7/20/10	1.5	Fill	3.4 J
		3.4	Fill (at bedrock interface)	28
		5.5	Bedrock	<0.33
HDS-22	7/20/10	1.5	Fill	4.6
		4.2	Fill (at bedrock interface)	<0.35
		6.2	Bedrock	<0.32
HDS-23	7/20/10	1.5	Fill	21
		3.0	Fill	4.7
		4.2	Fill (at bedrock interface)	1.2 J
		6.5	Bedrock	<0.34
HDS-24	7/20/10	1.5	Fill	4.1
		3.7	Fill (at bedrock interface)	1.0 J
		5.7	Bedrock	<0.33
HDS-25	7/20/10	1.5	Fill	5.0
		3.0	Fill	6.0
		5.0	Fill	150
		6.0	Fill (at bedrock interface)	<0.33
		7.6	Bedrock	<0.36
HDS-26	7/20/10	1.5	Fill	3.7 J
		3.0	Fill	4.9
		5.2	Fill	11
		7.5	Fill (at bedrock interface)	9.0
		8.3	Bedrock	<0.35
HDS-27	7/20/10	1.5	Fill	4.0
		3.0	Fill	8.8
		5.0	Fill (at bedrock interface)	290
		7.0	Bedrock	1.3 J
HDS-28	7/20/10	1.5	Fill	6.4
		2.8	Fill	25
		3.5	Bedrock	<0.34
		5.5	Bedrock	<0.34
HDS-29	12/20/10	1.5	Fill	4.9
		3.0	Fill	4.4
		5.0	Fill	4.7
		6.3	Fill (at bedrock interface)	5.5
		8.3	Bedrock	2.7 J



TABLE A-1

ANALYTICAL RESULTS FOR SOIL SAMPLES - ARSENIC<sup>1</sup>

Hoe Down Yard  
22<sup>nd</sup> Street at Illinois Street  
San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Date	Sample Depth (feet bgs)	Soil Type	Arsenic
HDS-30	12/20/10	1.5	Fill	<b>3.4 J</b>
		3.0	Fill	<b>8.8</b>
		4.7	Fill (at bedrock interface)	<b>3.2 J</b>
		6.7	Bedrock	<b>1.9 J</b>
HDS-31	12/20/10	1.5	Fill	<b>5.5</b>
		3.0	Fill	<b>4.1</b>
		5.0	Fill (at bedrock interface)	<b>7.8</b>
HDS-32	12/20/10	1.5	Fill	<b>3.5 J</b>
		3.0	Fill	<b>4.9</b>
		5.0	Fill (at bedrock interface)	<b>5.5</b>
HDS-33	12/20/10	1.5	Fill	<b>40</b>
		3.0	Fill	<b>11</b>
		4.7	Fill (at bedrock interface)	<b>4.5</b>
		6.5	Bedrock	<b>5.3</b>
HDS-34	12/20/10	1.5	Fill	<b>17</b>
		3.0	Fill	<b>3.6 J</b>
		4.0	Fill (at bedrock interface)	<b>3.6 J</b>
Site-Specific Background Concentration <sup>5</sup>				11.5

Notes:

1. Samples collected by AMEC Geomatrix, Inc. and analyzed by Test America San Francisco, of Pleasanton, California, using EPA Method 6010 for arsenic.
2. Concentrations detected at or above the laboratory reporting limit are **bold**.
3. Shaded cells indicate concentrations above the site-specific background concentration.
4. "J" indicates the analyte was positively identified at a concentration below the laboratory analytical reporting limit and above the laboratory analytical detection limit; the value presented is an approximate concentration.
5. EarthRisk, Inc., 2009, Background for Arsenic in Soil, Hoe Down Yard, Potrero Power Plant, April 2.

Abbreviations:

"<" indicates the compound was not detected at or above the method detection limit shown  
bgs = below ground surface



TABLE A-2

SOIL SAMPLE ANALYTICAL RESULTS - OTHER METALS <sup>1,2</sup>

Hoe Down Yard  
22<sup>nd</sup> Street at Illinois Street  
San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Depth (feet bgs)	Sample Date	Soil Type	Antimony	Barium	Beryllium	Cadmium	Total Chromium	Cobalt	Copper	Lead	Mercury	Molybdenum	Nickel	Selenium	Silver	Thallium	Vanadium	Zinc
HDS-1	1.0	2/3/06	Fill	<0.75 UJ	21.2	<0.25	<0.5	635	67.3	11.5 J+	6.98	<0.0835	<0.25	1,340	<0.75	0.264	<0.75	21.7	19.5
	5.0	2/3/06	Fill (at bedrock interface)	<0.75 UJ	196	<0.25	<0.5	580	54.9	22.9 J+	20.9	0.146	<0.25	1,030	<0.75	0.304	<0.75	33.4	52.3
HDS-2	1.0	2/3/06	Fill	<0.75 UJ	22.6	<0.25	<0.5	591	46.3	15.3 J+	11.6	<0.0835	<0.25	970	<0.75	<0.25	<0.75	23.6	33.6
	5.0	2/3/06	Bedrock	<0.75 UJ	36.3	0.544	<0.5	71.4	17.2	58.4 J+	10.9	<0.0835	<0.25	71.0	<0.75	<0.25	<0.75	34.7	76.5
HDS-3	1.0	2/3/06	Fill	<0.75 UJ	126	<0.25	<0.5	29.7	9.41	25.1 J+	35.6	0.556	<0.25	47.8	<0.75	0.447	<0.75	27.8	44.4
	5.0	2/3/06	Fill (at bedrock interface)	<0.75 UJ	36.3	<0.25	<0.5	524	51.3	35.0 J+	110	<0.0835	<0.25	1,020	<0.75	0.382	<0.75	18.7	134
HDS-4	1.0	2/3/06	Fill	<0.75 UJ	122	0.256	<0.5	32.6	7.95	20.3 J+	33.4	0.189	<0.25	43.7	0.767	0.647	<0.75	33.5	57.8
	5.0	2/3/06	Fill	<0.75 UJ	53.0	<0.25	<0.5	16.9	6.20	36.2 J+	7.80	<0.0835	<0.25	35.4	<0.75	<0.25	<0.75	25.4	25.7
	7.0	2/3/06	Bedrock	<0.75 UJ	3.96	<0.25	<0.5	935	61.8	40.4 J+	<0.5	<0.0835	<0.25	1,510	<0.75	0.337	<0.75	18.7	23.0
HDS-5	1.5	2/2/06	Fill	<0.75 UJ	134	0.281	<0.5	38.7	8.18	25.9	33.3	0.102	0.309	54.5	<0.75	<0.25	<0.75	34.2	55.4 J-
	5.7	2/2/06	Fill	3.88 J-	3.72	<0.25	<0.5	648	70.6	59.5	1.61	<0.0835	<0.25	2,010	<0.75	<0.25	<0.75	16.0	35.7 J-
HDS-6	1.2	2/2/06	Fill	<0.75 UJ	113	<0.25	<0.5	40.4	9.30	27.4	23.0	<0.0835	0.255	58.2	<0.75	<0.25	<0.75	34.6	48.5 J-
	5.0	2/2/06	Fill	0.821 J-	43.9	<0.25	<0.5	40.2	8.89	11.8	12.6	<0.0835	<0.25	36.6	<0.75	<0.25	<0.75	32.9	28.9 J-
	7.0	2/2/06	Bedrock	<0.75 UJ	<0.5	<0.25	<0.5	119	67.2	76.1	<0.5	<0.0835	<0.25	1,630	<0.75	<0.25	<0.75	2.84	38.9 J-
HDS-7	1.0	2/2/06	Fill	<0.75 UJ	135	<0.25	<0.5	34.6	9.25	27.6	25.9	0.117	<0.25	47.1	<0.75	<0.25	<0.75	39.8	48.9 J-
	6.4	2/2/06	Bedrock	<0.75 UJ	4.96	<0.25	<0.5	475	50.2	17.8	<0.5	<0.0835	<0.25	919	<0.75	<0.25	<0.75	21.0	16.8 J-
HDS-8	1.2	2/2/06	Fill	<0.75 UJ	162	0.419	<0.5	56.7	20.3	18.9	17.4	<0.0835	<0.25	79.1	<0.75	<0.25	<0.75	52.0	36.7 J-
	5.0	2/2/06	Fill	2.91 J-	0.550	<0.25	<0.5	1,980	71.5	15.8	<0.5	<0.0835	<0.25	1,720	<0.75	<0.25	<0.75	45.2	19.1 J-
	6.8	2/2/06	Bedrock	<0.75 UJ	<0.5	<0.25	<0.5	742	57.8	8.94	<0.5	<0.0835	<0.25	967	<0.75	<0.25	<0.75	25.6	12.9 J-
HDS-9	1.2	2/3/06	Fill	<0.75 UJ	63.7	<0.25	<0.5	475	46.6	31.0 J+	20.2	0.170	<0.25	813	<0.75	0.294	<0.75	34.0	50.8
	5.0	2/3/06	Bedrock	<0.75 UJ	7.76	<0.25	<0.5	957	78.8	4.16 J+	<0.5	<0.0835	<0.25	1,840	<0.75	<0.25	<0.75	12.8	9.02
HDW-4	7.5	2/2/06	Fill	<0.75	0.822	<0.25	<0.5	666	82.0	23.3	<0.5	<0.0835	<0.25	1,940	<0.75	<0.25	<0.75	6.99	21.9

Notes:

- <sup>1</sup> Samples collected by Geomatrix Consultants, Inc., and analyzed by Calscience Environmental Laboratories, Inc., of Garden Grove, California, using EPA Methods 6010B and 7471A.
- <sup>2</sup> Concentrations detected at or above the laboratory reporting limit are bold.
- <sup>3</sup> The end of the HDS-3-5.0 sample sleeve that was originally analyzed was reanalyzed and the opposite end of the sample sleeve also was analyzed. The results were 189 mg/kg and 3.47 mg/kg, respectively.
- <sup>4</sup> The end of the HDS-4-7.0 sample sleeve that was originally analyzed was reanalyzed and the opposite end of the sample sleeve also was analyzed. The results were 64.2 mg/kg and 41.3 mg/kg, respectively.

Abbreviations:

- "<" indicates the compound was not detected at or above the laboratory reporting limit shown
- bgs = below ground surface
- "J-" indicates the concentration is estimated and may be biased low
- "J+" indicates the concentration is estimated and may be biased high
- "UJ" indicates the compound was analyzed for, but was not detected; the reported quantitation limit is approximate and may be inaccurate or imprecise



TABLE A-3

SOIL SAMPLE ANALYTICAL RESULTS--TEPH AND VOCs <sup>1</sup>

Hoe Down Yard  
22<sup>nd</sup> Street at Illinois Street  
San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Date	Sample Depth (feet bgs)	Soil Type	Petroleum-range Hydrocarbons		Volatile Organic Compounds				
				TEPHd	TEPHmo	Acetone	Benzene	tert-Butyl-benzene	Toluene	Other VOCs
HDS-1	2/3/06	1.0	Fill	9.9 J <sup>2,3</sup>	40	--	--	--	--	--
		5.0	Fill (at bedrock interface)	13	220	<0.015	<0.00077	<0.00077	<0.00077	All ND
HDS-2	2/3/06	1.0	Fill	16 J	140	--	--	--	--	--
		5.0	Bedrock	<5	28	<0.017	0.0052	<0.00087	0.0011	All ND
HDS-3	2/3/06	1.0	Fill	250 J	2,300	--	--	--	--	--
		5.0	Fill (at bedrock interface)	400 J	3,900	0.032	<0.00088	<0.00088	<0.00088	All ND
HDS-4	2/3/06	1.0	Fill	210 J	1,200	--	--	--	--	--
		5.0	Fill	650 J	7,800	0.017	0.0012	<0.00082	<0.00082	All ND
		7.0	Bedrock	5.4	<25	--	--	--	--	--
HDS-5	2/2/06	1.5	Fill	480 J	1,600	--	--	--	--	--
		5.7	Fill	<5	27	<0.024	<0.0012	<0.0012	<0.0012	All ND
HDS-6	2/2/06	1.2	Fill	64 J	460 J	--	--	--	--	--
		5.0	Fill	5.2 J	120 J	0.045	<0.00092	<0.00092	<0.00092	All ND
HDS-7	2/2/06	1.0	Fill	240J	1,100	--	--	--	--	--
		6.0	Bedrock	<5	<25	<0.05	<0.005	<0.005	<0.005	All ND
HDS-8	2/2/06	1.2	Fill	<25	510 J	--	--	--	--	--
		5.0	Fill	110	120	0.074	<0.00094	0.0011	<0.00094	All ND
HDS-9	2/3/06	1.2	Fill	12 J	800	--	--	--	--	--
		5.0	Bedrock	8.0	<25	<0.02	<0.001	<0.001	<0.001	All ND
HDW-4	2/2/06	7.5	Fill	<5	<25	--	--	--	--	--
HDS-10	5/8/08	2.5	Fill	12 J	43	--	--	--	--	--
		4.5	Fill (at bedrock interface)	19 J	36	--	--	--	--	--
		7.5	Bedrock	< 10 UJ <sup>4</sup>	< 10	--	--	--	--	--
HDS-11	5/8/08	3.5	Fill	15 J	31	--	--	--	--	--
		5.5	Fill (at bedrock interface)	250 J	320	--	--	--	--	--
		12.0	Bedrock	< 10 UJ	< 10	--	--	--	--	--
HDS-12	5/8/08	2.0	Fill	240 J	320	--	--	--	--	--
		3.4	Fill (at bedrock interface)	63 J	160	--	--	--	--	--
		9.8	Bedrock	< 10 UJ	< 10	--	--	--	--	--

4990



TABLE A-3

SOIL SAMPLE ANALYTICAL RESULTS-TEPH AND VOCs <sup>1</sup>

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Date	Sample Depth (feet bgs)	Soil Type	Petroleum-range Hydrocarbons		Volatile Organic Compounds				
				TEPHd	TEPHmo	Acetone	Benzene	tert-Butylbenzene	Toluene	Other VOCs
HDS-13	5/8/08	2.0	Fill	200 J	330	--	--	--	--	--
		4.7	Fill (at bedrock interface)	56 J	180	--	--	--	--	--
		7.0	Bedrock	< 10 UJ	13	--	--	--	--	--
HDS-14	5/8/08	2.5	Fill	140 J	250	--	--	--	--	--
		5.0	Fill (at bedrock interface)	1,200 J	1,800	--	--	--	--	--
		8.0	Bedrock	< 10 UJ	< 10	--	--	--	--	--
HDS-15	5/8/08	3.5	Fill	66 J	120	--	--	--	--	--
		5.5	Fill (at bedrock interface)	< 10 UJ	59	--	--	--	--	--
		10.2	Bedrock	< 10 UJ	< 10	--	--	--	--	--
HDS-16	5/8/08	1.5	Fill	540 J	770	--	--	--	--	--
		3.2	Fill	37 J	90	--	--	--	--	--
		10.0	Bedrock	< 10 UJ	< 10	--	--	--	--	--

Notes

1. Samples collected by AMEC Geomatrix, Inc., and analyzed by Creek Environmental Laboratories, Inc., of San Luis Obispo, California, using EPA Methods 8015B for TEPH and 8260 for VOCs.
2. Concentrations detected at or above the laboratory reporting limit are bold.
3. "J" indicates the analyte was positively identified; the value is an approximate concentration
4. "UJ" indicates the analyte was not detected above the reporting sample quantitation limit; however, the reported quantitation limit is approximate and may or may represent the actual limit of quantitation necessary to accurately and precisely measure the analyte in the sample

Abbreviations

"--" indicates not analyzed  
 "<" indicates the compound was not detected at or above the laboratory reporting limit shown  
 bgs = below ground surface  
 TEPHd = total extractable petroleum hydrocarbons quantified as diesel  
 TEPHmo = total extractable petroleum hydrocarbons quantified as motor oil  
 VOCs = volatile organic compounds

4991







TABLE A-5

SOIL SAMPLE ANALYTICAL RESULTS - PCBs AND PESTICIDES <sup>1</sup>

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in milligrams per kilogram (mg/kg)

Boring ID	Sample Depth (feet bgs)	Soil Type	Sample Date	PCBs	Pesticides
HDS-1	1.0	Fill	2/3/06	All ND	All ND
	5.0	Fill (at bedrock interface)	2/3/06	All ND	All ND
HDS-7	1.0	Fill	2/2/06	All ND	--
	6.4	Bedrock	2/2/06	All ND	--
HDS-8	1.2	Fill	2/2/06	All ND	All ND
	5.0	Fill	2/2/06	All ND	All ND
	6.8	Bedrock	2/2/06	All ND	All ND
HDS-9	1.2	Fill	2/3/06	All ND	All ND
	5.0	Bedrock	2/3/06	All ND	All ND

Notes:

1. Samples collected by Geomatrix Consultants, Inc., and analyzed by Calscience Environmental Laboratories, Inc., of Garden Grove, California, using EPA Methods 8081A for pesticides and 8082 for PCBs.

Abbreviations:

- "-" indicates sample not analyzed for analyte indicated
- "All ND" indicates no other compounds detected at or above laboratory reporting limits
- bgs = below ground surface
- PCBs = polychlorinated biphenyls



TABLE A-6

**SOIL SAMPLE ANALYTICAL RESULTS - NATURALLY OCCURRING ASBESTOS AND  
TOTAL CYANIDE <sup>1,2</sup>**  
 Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Boring ID	Sample Depth (feet bgs)	Sample Date	Soil Type	Naturally Occurring Asbestos (%)	Total Cyanide (mg/kg)
HDS-1	1.0	2/3/06	Fill	<b>4.8</b>	<0.50
	5.0	2/3/06	Fill (at bedrock interface)	<b>2.8</b>	<0.50
HDS-8	1.2	2/2/06	Fill	<b>1.3</b>	<0.50
	5.0	2/2/06	Fill	<b>0.5</b>	<0.50
	6.8	2/2/06	Bedrock	<b>1.5</b>	<0.50
HDS-9	1.2	2/3/06	Fill	<b>3.8</b>	<0.50
	5.0	2/3/06	Bedrock	<b>6.3</b>	<0.50

Notes

1. Samples collected by Geomatrix Consultants, Inc. Asbestos analyzed by Forensic Analytical of Hayward, California, using CARB Method 435. Total cyanide analyzed by Calscience Environmental Laboratories, Inc., of Garden Grove, California, using EPA Method 9010B.
2. Concentrations detected at or above the laboratory reporting limit are **bold**.

Abbreviations

"<" indicates the compound was not detected at or above the laboratory reporting limit shown  
 bgs = below ground surface  
 CARB = California Air Resources Board  
 mg/kg = milligrams per kilogram



TABLE A-7

GROUNDWATER ANALYTICAL RESULTS - METALS <sup>1,2</sup>

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in micrograms per liter (µg/L)

Boring ID	Sample Date	Antimony	Arsenic	Barium	Beryllium	Cadmium	Chromium (Total)	Cobalt	Copper	Cyanide	Lead	Mercury	Molybdenum	Nickel	Selenium	Silver	Thallium	Vanadium
HDW-4	2/2/06	<0.015	<0.01	<b>103</b>	<0.001	<0.005	<0.005	<0.005	<b>19.2</b>	<0.05	<0.01	<0.0005	<5	<b>9.78</b>	<0.015	<0.005	<0.015	<0.005
HDW-5	2/3/06	<0.015	<0.01	<10	<0.001	<0.005	<0.005	<0.005	<5	<0.05	<0.01	<0.0005	<5	<5	<0.015	<0.005	<0.015	<0.005
HDW-6	2/3/06	<0.015	<0.01	<b>15.7</b>	<0.001	<0.005	<0.005	<0.005	<5	<0.05	<0.01	<0.0005	<b>8.22</b>	<b>17.3</b>	<0.015	<0.005	<0.015	<0.005

- Notes**
1. Samples collected by Geomatrix Consultants, Inc., and analyzed by Calscience Environmental Laboratories, Inc., of Garden Grove, California, using EPA Methods 6010B and 7470A.
  2. Concentrations detected at or above the laboratory reporting limit are **bold**.

**Abbreviations**  
 "<" indicates the compound was not detected at or above the laboratory reporting limit shown  
 "All ND" indicates no other compounds detected at or above laboratory reporting limits  
 EPA = U.S. Environmental Protection Agency

4995



TABLE A-8

GROUNDWATER SAMPLE ANALYTICAL RESULTS - ORGANIC COMPOUNDS <sup>1,2</sup>

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in micrograms per liter (µg/L)

Boring ID	Sample Date	Petroleum-range Hydrocarbons			VOCs					PAHs		Other Organic Compounds
		TPHg	TEPHd	TEPHmo	Benzene	Total Xylenes	Toluene	1,2,4-Trimethylbenzene	1,3,5-Trimethylbenzene	Total 1- and 2-Methylnaphthalene	Naphthalene	
HDW-4	2/2/06	<50	<b>3,400</b>	5,300	<0.5	<1	<1	<1	<1	2.3	<1	All ND
HDW-5	2/3/06	<b>130</b>	<b>13,000</b>	<2,500	<b>1.3</b>	<b>3.0</b>	<b>1.5</b>	<b>1.7</b>	<b>1.1</b>	<b>9.4</b>	<b>4.9</b>	All ND
HDW-6	2/2/06	<50	<b>780/310 J<sup>3</sup></b>	<2,500/370 J <sup>3</sup>	<0.5	<1	<1	<1	<1	<1	<1	All ND

Notes:

1. Samples collected by Geomatrix Consultants, Inc., and analyzed by Calscience Environmental Laboratories, Inc., of Garden Grove, California, using EPA Methods 8015M for TPH, 8260B for VOCs, and 8270C SIM for PAHs. Except where noted, TEPHd and TEPHmo analyses were conducted following silica gel preparation.
2. Concentrations detected at or above the laboratory reporting limit are **bold**.
3. Samples were analyzed for TEPHd and TEPHmo twice; results are for analysis without silica gel preparation and with silica gel preparation, respectively.

Abbreviations:

- "<" indicates the compound was not detected at or above the laboratory reporting limit shown
- EPA = U.S. Environmental Protection Agency
- "J" indicates the concentration is estimated; the associated numerical value is the approximate concentration of the compound in the sample
- PAHs = polynuclear aromatic hydrocarbons
- SIM = selective ion monitoring
- TEPHd = total extractable petroleum hydrocarbons quantified as diesel
- TEPHmo = total extractable petroleum hydrocarbons quantified as motor oil
- TPHg = total petroleum hydrocarbons quantified as gasoline
- VOCs = volatile organic compounds

4996



TABLE A-9

**GROUNDWATER SAMPLE ANALYTICAL RESULTS - CYANIDE <sup>1</sup>**

Hoe Down Yard  
 22<sup>nd</sup> Street at Illinois Street  
 San Francisco, California

Concentrations in micrograms per liter (µg/L)

Boring ID	Sample Date	Total Cyanide	Available Cyanide
HDW-4	2/2/06	<50	<2
HDW-5	2/3/06	<50	<2
HDW-6	2/3/06	<50	<2

Notes:

1. Samples collected by Geomatrix Consultants, Inc. Total cyanide analyzed by Calscience Environmental Laboratories, Inc., of Garden Grove, California, using EPA Method 335.2. Available cyanide analyzed by Exygen Research of State College, Pennsylvania, using EPA Method OIA-1677.

Abbreviations:

"<" = indicates the compound was not detected at or above the laboratory reporting limit shown  
 EPA = U.S. Environmental Protection Agency

4998

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**Explanation**

- △ July and December 2010 soil sampling location
- Former soil and grab groundwater sampling location (February 2006)
- ⊕ Former grab groundwater sampling location where no groundwater was encountered prior to refusal at bedrock, depths ranged from 5.0 to 10.5 ft bgs (February 2006)
- ⊗ Former grab groundwater sampling location (February 2006)
- ▲ Former soil sampling location (February 2006 and May 2008)
- Historical soil boring (E&E, 1990)
- Approximate Hoe Down Yard boundary
- Former site features

**Notes:**

1. References: PG&E drawing #480719, 1926; Sanborn Fire Insurance Map, 1914; Camp Dresser & McKee, Phase I Site Assessment, 1997; and Ecology and Environment, Preliminary Endangerment Assessment, 1991.
2. Former boring locations surveyed March 2006; other site features not surveyed.

**HISTORICAL SAMPLING LOCATIONS**  
 Hoe Down Yard  
 22nd Street at Illinois Street  
 San Francisco, California

By: MC	Date: 06/22/2012	Project No. OD11161110.6
		Figure A-1

6667

S:\ODI\116110116110\_000612\_0203\_hov\fig\_a-020604.mxd



Explanation

- ▲ July and December 2010 soil sampling location
- Former soil and grab groundwater sampling location (February 2006)
- ⊕ Former grab groundwater sampling location where no groundwater was encountered prior to refusal at bedrock, depths ranged from 5.0 to 10.5 ft bgs (February 2006)
- ⊕ Former grab groundwater sampling location (February 2006)
- ▲ Former soil sampling location (February 2006 and May 2008)
- Historical soil boring (E&E, 1990)
- Approximate Hoe Down Yard boundary
- ▲ Locations where arsenic concentrations in soil exceeded site-specific background concentration (11.5 mg/kg)
- Former site features
- Approximate former trench location

Depth in feet below ground surface (bgs)	
1.0 (F)	3.29
5.0 (F)	1.17
7.0 (B)	98.5

Concentration in milligrams per kilogram (mg/kg)

**Bold/Italic indicate concentrations greater than site-specific background**

Abbreviations:

- (F) = fill
- (B) = bedrock
- ND = not detected above reporting limit
- S = surface

Notes:

1. References: PG&E drawing #480719, 1926; Sanborn Fire Insurance Map, 1914; Camp Dresser & McKee, Phase I Site Assessment, 1997; and Ecology and Environment, Preliminary Endangerment Assessment, 1991.
2. Former boring locations surveyed March 2006; other site features not surveyed.

SOIL SAMPLE ANALYTICAL RESULTS - ARSENIC  
Hoe Down Yard  
22nd Street at Illinois Street  
San Francisco, California

By: MC | Date: 06/22/2012 | Project No. OD11161110.6

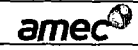


Figure A-2



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**APPENDIX B**

**Guidelines for Dust Monitoring**





## APPENDIX B

### GUIDELINES FOR DUST MONITORING

Hoe Down Yard  
22nd Street and Illinois Street  
San Francisco, California

These guidelines for dust monitoring have been developed for the PG&E Hoe Down Yard (HDY) site. Prior to commencement of any subsurface site work and/or construction activities, the Contractor should review these guidelines and evaluate the need for task-specific dust monitoring for their workers. This evaluation may include performing a Negative Exposure Assessment where activities will disturb materials containing asbestos, including NOA. The preparation of a task-specific dust monitoring plan (if deemed necessary by the contractor), and the compliance with that plan are ultimately the responsibility of the contractor performing the work.

The Contractor's exposure monitoring plan, if required, shall be under the review and direction of a Certified Industrial Hygienist (CIH) for the duration of the project. This exposure monitoring program shall provide statistical objective data of employee and environmental exposure to airborne fibers of asbestos or metals through the analysis of baseline, process, and personal air monitoring. All air samples shall be taken using an 0.8-micron mixed cellulose ester (MCE) filter mounted in a 25-mm open-face filter holder. Personal and work area air sampling shall be conducted at a flow rate between 0.5 and 2.4 liters per minute. A flow rate of 2.0 liters per minute is generally used. Air samples taken on the exterior of the work area for evaluation of the work site may have air flow rates up to approximately 15 liters per minute depending upon the anticipated fiber/dust loading in the area sampled.

All personnel and area air sampling shall include:

- Recording the starting and stopping of the pumps,
- Setting and recording air flow rates, using a calibrated rotameter, at the beginning and at the end of the sampling period,
- Inspection of cassettes every two hours for overloading,
- Ensuring that all record-keeping for the sampling process is accurate and complete, and
- Calibration of rotameters (a secondary standard) using a primary standard at a minimum of every six months. Calibration records shall be maintained on site.

At the end of each day during which monitoring is conducted, all air monitoring cassettes will be delivered to a certified and approved laboratory for either transmission electron microscopy (TEM) analysis or GC/MS analysis. The analytical sensitivity for TEM analysis should be 0.001



structures per cubic centimeters and all asbestos structures with an aspect ratio greater than 3 to 1 (3:1) shall be counted irrespective of length.

Two types of sampling forms may be used in terms of cassette distribution:

- Full-period, Continuous Single Sampling Form, and
- Full-period, Consecutive Sampling Form.

The former strategy uses one cassette throughout the sampling period, while the second form uses multiple cassettes consecutively in conducting the sampling. The latter strategy shall be used when the CIH determines that the cassette may become overloaded in work areas where dust and particulate matter may be found in high concentrations.

#### **B.1 INITIAL BASELINE OR BACKGROUND SAMPLING**

These air monitoring and resultant exposure assessment determinations shall be conducted prior to the beginning of work site preparation. The assessment will be used to justify and verify proposed compliance measures for a particular regulated area. The proposed work plan shall be flexible enough to adjust to such assessment demands.

#### **B.2 PERIODIC EXPOSURE MONITORING**

An Industrial Hygienist (IH), or IH technician under the supervision of the CIH, shall conduct eight-hour time-weighted average (TWA) and 30-minute short term exposure limits (STEL) exposure monitoring in the breathing zone of the employees, which shall be representative of employees' exposure to airborne fibers and or dust concentrations in a particular work area. Personal sampling pumps should run continuously for the duration of the sampling period and should be stopped during lunch, rest breaks, and any other periods where employees must leave the work area. When it is time for a sampling pump to be turned off, the IH technician will check the air flow with a calibrated rotameter, mark the time when the sampling was terminated, and assist the employee in removing the pump assembly from his/her waist.

The following exposure monitoring information will be recorded on each air sampling form:

- Test number and sampling pump number,
- Name of person conducting test,
- Name of person tested and the activity of the worker being sampled,
- Identification or employee number of the person monitored,
- Date, location, and time (pump time on and off),
- Ambient conditions, such as temperature, approximate humidity, and presence of wind/ventilation during the test, and
- Rotameter reading and pump rate, and volume of air collected (calculated based on rate).



The IH shall follow the procedures below when performing 8-hour TWA personal air monitoring:

- Turn the personal air monitoring pump on and secure the pump mechanism around employee's waist. Secure the cassette in the employee's breathing zone (employee's lapel or collar).
- Record air-flow with a calibrated rotameter and note the time when sampling was started.
- Periodically inspect the cassette's filter for overloading.
- At break times, mark time off/on.
- At lunch, record air-flow and the time during which sampling was discontinued.
- At the end of the shift, record air-flow with a calibrated rotameter, mark the time when sampling was stopped, and remove the pump assembly from the employee.
- Decontaminate personal pumps using wet-cleaning techniques.

Thirty-minute STEL personal air monitoring will be conducted daily to represent on-site ceiling concentration to airborne fibers for all employees. Sampling shall be performed for thirty minutes during a work procedure or process that could most likely exceed the permissible exposure level (PEL).

### **B.3 AREA EXPOSURE MONITORING**

Representative 8-hour area exposure monitoring shall be conducted by an IH under the direction of a CIH on a daily basis to determine environmental personnel exposures outside the regulated area. The pumps, tripod stands, and cassettes shall be set up at convenient locations along the perimeter of the construction site and away from contact with equipment or traffic. All of the standard operating procedures pertaining to air monitoring techniques shall apply for area exposure monitoring.

### **B.4 TERMINATION OF EXPOSURE MONITORING**

Termination of exposure monitoring will be based on the results of negative exposure assessments that were implemented by the contractor per 29 CFR 1926.1101 and Title 8 CCR 1529. The assessment criteria used to justify the termination of exposure monitoring include:

- Objective data showing that NOA for the activity involved in the disturbance or removal of the soil will produce exposures below the respective PEL (0.1 fibers/cubic centimeter for asbestos) under conditions having the greatest potential for releasing asbestos or dust.
- Evidence that the work to be conducted closely resembles a previous job performed within the last twelve months (i.e., work was conducted in compliance with these guidelines and is similar in environment with respect to types of materials worked on, kinds of engineering controls used, standard working procedures followed, and experience of employees).
- The results of initial exposure monitoring of the current job made from breathing-zone air samples that are representative of the 8-hour TWA and 30-minute short-



term exposures of each employee covering operations which are most likely during the performance of the entire job to result in exposures below the PEL for asbestos.

**EXHIBIT E**

**COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY**

(To be attached.)



**Recording Requested By:**

Pacific Gas and Electric Company

**When Recorded, Mail To:**

California Regional Water Quality Control Board San Francisco Bay Region

**Attn:**

Bruce H. Wolfe, Executive Officer  
Mark Johnson (Case #38S0038)  
1515 Clay Street, Suite 1400  
Oakland, California 94612

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

**Potrero Hoe Down Yard  
1201 Illinois Street, San Francisco, California  
APN 4110-008A, 4120-002, & Michigan Street (portion)**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 17<sup>th</sup> day of Oct., 2012 by Pacific Gas and Electric Company ("Covenantor") who is the Owner of record of that certain property situated at the address commonly known as 1201 Illinois Street, in the City of San Francisco, County of San Francisco, State of California, which is more particularly described in Exhibits A and B attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"), with reference to the following facts:

A. Hazardous Materials are Present. The Burdened Property and groundwater underlying the Burdened Property contains hazardous materials as defined in California Health & Safety Code Section 25260.

B. Contaminants at the Burdened Property. Historical industrial operations conducted at the Burdened Property include fuel oil storage from the early 1900s to the mid-1990s. Soil and groundwater at the Burdened Property were contaminated by these historical industrial operations.

Constituents detected in soil and/or groundwater at the Burdened Property includes petroleum compounds and heavy metals (i.e., arsenic and lead). In addition, up to 6% naturally occurring asbestos has been detected in soil on the Burdened Property. Summaries of the nature and extent of these constituents, along with tabular summaries of the analytical data collected, are presented in the Site Management Plan (SMP), which is incorporated herein by this reference. A SMP Summary is attached to this Covenant as Exhibit C for information purposes; the current SMP is

located at the Burdened Property and the Water Board office. A current SMP must be maintained by the Owner and Occupants of the Burdened Property.

C. Exposure to Contaminants. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure to these contaminants could take place if intrusive activities occur. To minimize such exposures, the SMP was developed to manage the pollutants present and guide intrusive activities.

Without the mitigation measures as set forth in this Covenant, exposure to these contaminants could take place via dermal contact, inhalation and incidental ingestion. The risk of public exposure to the contaminants has been substantially lessened by the controls described herein which include the SMP and restricted use.

D. Management of Residual Pollution. In order to assure the continued protection of human health and the environment a SMP has been prepared. The SMP sets forth health and safety procedures and pollutant management protocols to be followed during construction or maintenance activities on the Burdened Property. The SMP also sets forth procedures for long-term management of residual pollutants on the Burdened Property. A copy of the SMP must be maintained by the Owners and Occupants and shall be complied with at all times. It is the responsibility of the existing Owner and Occupants to insure compliance with this Covenant and associated SMP.

E. Use. At the time of recordation hereof, the western parcel (APN 4110-008) of the Burdened Property is used for vehicle parking and equipment storage and the eastern parcel (APN 4120-002) is used for the temporary stockpiling of broken concrete slabs, mixed soil, sand, gravel, and asphalt generated during subsurface utility maintenance operations conducted throughout San Francisco by Covenantor. The Burdened Property is adjacent to industrial and commercial land uses.

F. Disclosure. Full and voluntary disclosure to the Water Board of the presence of hazardous materials on the Burdened Property has been made by the Covenantor and extensive sampling of the Burdened Property has been conducted.

G. Future Use Restricted. Covenantor desires and intends that in order to benefit the Water Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in



Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Water Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Water Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Water Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Water Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

2.1 Water Board. "Water Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved/capped parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

2.5 Site Management Plan. The "Site Management Plan" shall mean the June 22, 2012, Site Management Plan, including any amendments or revisions thereto, which has been approved in writing by the Water Board's Executive Officer. A copy of the approval letter shall be attached to the amendmended or revised SMP.

2.6 SMP. "SMP" shall mean Site Management Plan, as described in 2.5 above.

### ARTICLE III

#### DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to industrial or commercial use;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals or health care facilities shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No agricultural activities producing items for human consumption shall be permitted on the Burdened Property;
- g. Owners or Occupants of the Burdened Property or any portion thereof shall notify the Water Board of any intrusive activity or excavation work that results in the generation of 50 cubic yards or more of soil on the Burdened Property. Any contaminated soils brought to the surface by any grading, excavation, trenching, or backfilling shall be managed by Owners or Occupants or their agents in accordance with all applicable provisions of local, state and federal law; and the approved site-specific SMP. Notification information is provided in Attachment C.
- h. All uses, maintenance and development of the Burdened Property shall maintain compliance with the SMP unless otherwise expressly permitted in writing by the Water Board.
- i. No Owners or Occupants of the Burdened Property or any portion thereof shall drill,

bore, otherwise construct, or use a well for the purpose of extracting water for any use, including, but not limited to, domestic, agricultural, potable, or industrial uses, unless expressly permitted in writing by the Water Board.

j. The Owner or Occupants shall notify the Water Board of any activity that is not performed in compliance with the SMP. Notification to the Water Board shall be made by registered mail within ten (10) working days of the discovery of such activity. The notification shall include a description and schedule for implementing corrective actions. Documentation regarding the implementation of corrective actions shall also be transmitted to the Water Board by registered mail within ten (10) working days of their completion

k. All Owners and Occupants agree that the Water Board, and/or any persons acting pursuant to Water Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

l. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Water Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Water Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to an environmental deed restriction dated as of \_\_\_\_\_, 2012, and recorded on \_\_\_\_\_, 2012, in the Official Records of San Francisco County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. Incorporated into this deed restriction is a Site Management Plan (SMP). A copy of the SMP must be maintained by the Owners and Occupants of the property and shall be complied with at all times. It is the responsibility of the existing Owner and Occupants to insure compliance with this deed restriction and associated SMP. This statement is not a declaration that a hazard exists.

ARTICLE IV  
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Water Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V  
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*

Pacific Gas and Electric Company  
Director - Environmental Remediation  
3401 Crow Canyon Rd.  
San Ramon, CA 94583

*If To: "Water Board"*

Regional Water Quality Control Board  
San Francisco Bay Region  
Attention: Executive Officer  
1515 Clay Street, Suite 1400  
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions on Development and Use or other terms set forth herein is determined to be invalid for any reason, the remaining portion shall

remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Water Board. This instrument shall be recorded by the Covenantor in the County of San Francisco within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to affect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor:  
Pacific Gas and Electric Company

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

Title: \_\_\_\_\_

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

Agency:  
State of California  
Regional Water Quality Board, San Francisco Bay Region

By: Bruce H. Wolfe  
*Bruce H. Wolfe*

Title: Executive Officer

Date: October 17, 2012

*See attached*

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, the undersigned a Notary Public in and for said state, personally appeared [EXECUTIVE OFFICER], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_

Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

State of California  
 County of Alameda

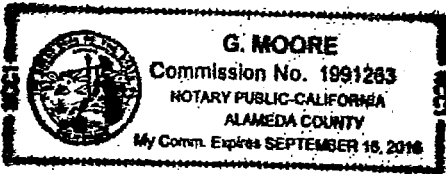
Subscribed and sworn to (or affirmed) before me on this  
17<sup>th</sup> day of October, 2012, by  
Date Month Year  
 (1) BRUCE WOLFE  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and)  
 (2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature G. Moore  
Signature of Notary Public



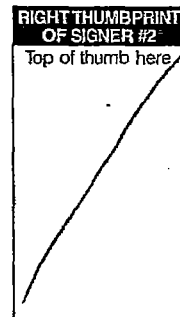
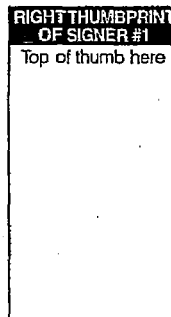
Place Notary Seal Above

**OPTIONAL**

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

**Further Description of Any Attached Document**

Title or Type of Document: Converant and Environmental Restriction on Property  
 Document Date: 10-17-12 Number of Pages: 14  
 Signer(s) Other Than Named Above: \_\_\_\_\_



**LD XXSF-00-4249**

2012153 (22-12-038) 3 12 1

Potrero Hoe Down Yard Deed Restriction

**EXHIBIT "A"**

The parcel of land situate in the City and County of San Francisco, State of California, described as follows:

(APN 4110-008A, 4120-002, & Michigan Street (portion))

PARCEL 1

BEGINNING at the point of intersection of the northerly boundary line of 22<sup>nd</sup> Street with the easterly boundary line of Illinois Street, and running thence along said northerly boundary line of 22<sup>nd</sup> Street

(1) north 86°49'44" east 520.00 feet

to the southeasterly corner of that certain parcel of land described and designated PARCEL ONE in the deed from Bethlehem Steel Corporation to Pacific Gas and Electric Company dated August 17, 1970 and recorded in Book B458 of Official Records at page 150, Records of the City and County of San Francisco; thence along the easterly boundary line of said PARCEL ONE and the easterly boundary line of the parcel of land described and designated PARCEL TWO in said deed dated August 17, 1970

(2) north 3°10'16" west 270.00 feet

to the northeasterly corner of said PARCEL TWO; thence along the northerly boundary line of said PARCEL TWO and it's westerly prolongation

(3) south 86°49'44" west 320.00 feet

to the westerly boundary line of Michigan Street; thence along said westerly boundary line of Michigan Street

(4) north 3°10'16" west 59.00 feet

to the northeasterly corner of the parcel of land described in the deed from Union Iron Works Company to Pacific Gas and Electric Company dated December 1, 1923 and recorded in Book 820 of Official Records at page 473, Records of the City and County of San Francisco; thence along the northerly boundary line of the parcel of land described in said deed dated December 1, 1923 and the northerly boundary line of the parcel of land described and designated PARCEL 27 in the deed from California Pacific Realty Company to Pacific Gas and Electric Company dated February 28, 1924 and recorded in Book 819 of Official Records at page 494, Records of the City and County of San Francisco,

(5) south 86°49'44" west 200.00 feet

to the easterly boundary line of Illinois Street; thence along said easterly boundary line of Illinois Street

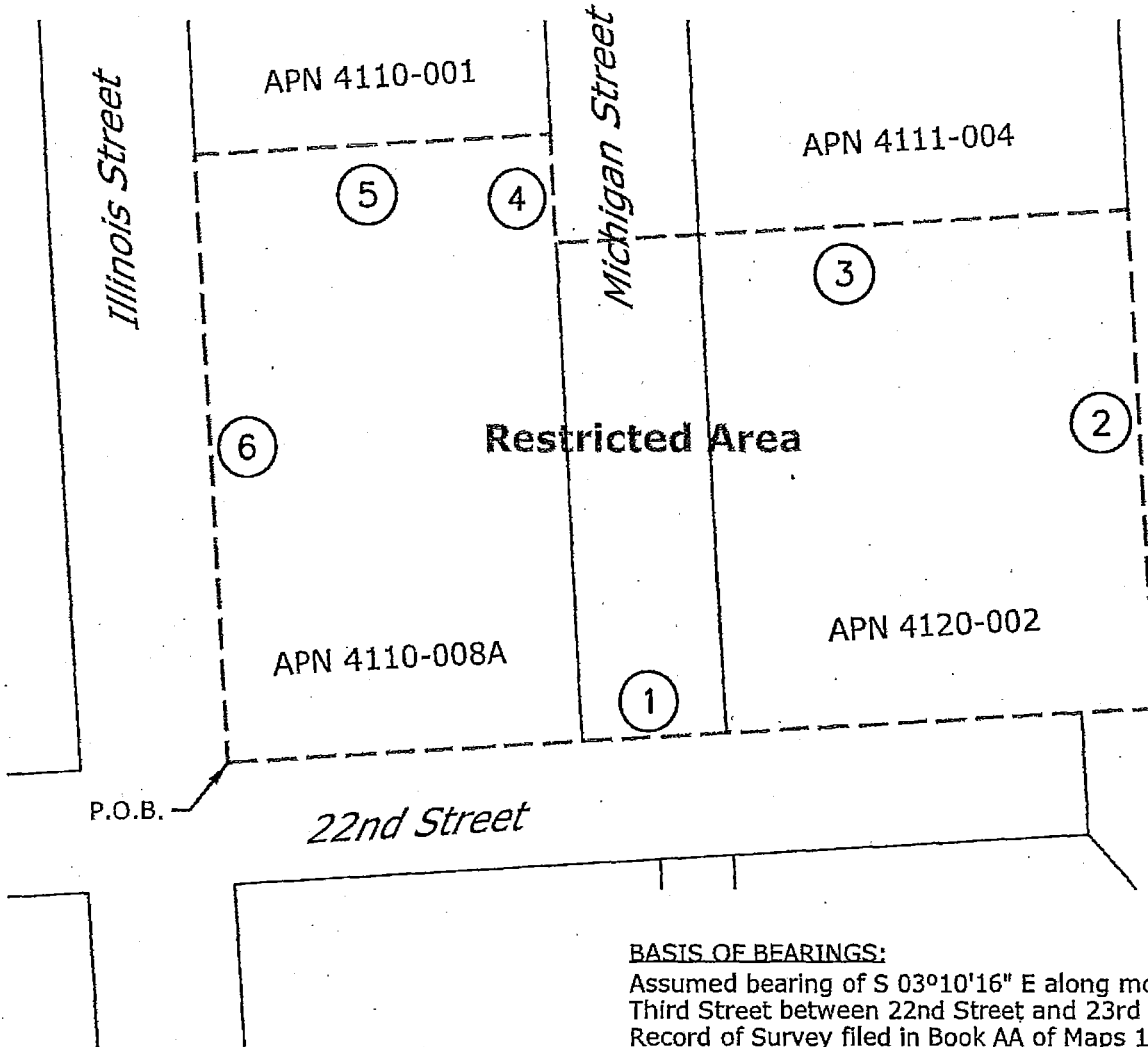
(6) south 3°10'16" east 329.00 feet, more or less,

to the Point of Beginning.



T.2S., R.5W., M.D.M.  
 SW 1/4 Section 14  
 SE 1/4 Section 15  
 City of San Francisco

REFC. DWG S-7666A ALTA  
 DWG S-3851 ALTA



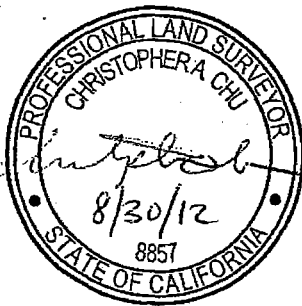
**BASIS OF BEARINGS:**

Assumed bearing of S 03°10'16" E along monument line of Third Street between 22nd Street and 23rd Street per Record of Survey filed in Book AA of Maps 13-14.

Table of Courses		
Course	Bearing	Distance
1	N86°49'44"E	520.00'
2	N3°10'16"W	270.00'
3	S86°49'44"W	320.00'
4	N3°10'16"W	59.00'
5	S86°49'44"W	200.00'
6	S3°10'16"E	329.00'

**ABBREVIATIONS:**

P.O.B. Point of Beginning



**Pacific Gas & Electric Company**  
 Land Surveying & Engineering Support, South Coast  
 245 Market St. N10A, San Francisco, CA 94105

**Exhibit "B"**

2012153 (22-12-038)  
 Potrero Hoe Down Yard

## SITE MANAGEMENT PLAN SUMMARY

Hoe Down Yard  
22<sup>nd</sup> Street and Illinois Street  
San Francisco, California

This document provides a summary of the Site Management Plan (SMP) for the Hoe Down Yard (HDY) Land Use Covenant (LUC)/Deed Restriction. This summary is presented for informational purposes but does not replace the SMP for the HDY dated May 2012. The SMP addresses specific chemicals in soil and groundwater and does NOT address any other health and safety issues related to any other hazards or activities (including, but not limited to, electrical hazards, trenching and shoring, and weather-related hazards). Additional health and safety measures may be required for any onsite activity.

The approximately 3-acre HDY site addressed in the SMP is located in a commercial/industrial area of San Francisco. It is bounded to the south by 22nd Street and PG&E's Switchyard/GC yard, to the east and north by automobile and equipment storage located on the Port of San Francisco's Pier 70 property (i.e., SF Auto Return), and to the west by Illinois Street.

For more information on any topic summarized below, please refer to the noted sections of the SMP. ***The SMP, and not this informational summary, is to be followed for any activities that will bring on-site workers into contact with potentially contaminated soils or groundwater, such as excavation, trenching, or other soil intrusive work.***

Before beginning maintenance or construction work that involves accessing subsurface soil or groundwater at the HDY, the responsible PG&E employee should notify the PG&E Environmental Field Specialist (EFS) for the HDY (see Section 4.2 in SMP for contact information). The PG&E EFS will determine if regulatory agencies, such as the City and County of San Francisco Department of Public Health (SFDPH) or the San Francisco Bay Region Water Quality Control Board (Water Board) need to be notified about upcoming work.

### SITE HISTORY AND CURRENT USES (SMP – SECTIONS 2.1 AND 2.2)

The site has been in use since the 1880's. Historical industrial operations have been primarily limited to the operation of fuel oil aboveground storage tanks (ASTs) located in the southern portion of the western parcel. Up to four fuel oil ASTs (30,000 to 40,000-barrel capacity), along with associated aboveground piping and an oil heater house, were present in the southwestern portion of the site to support historical industrial operations at the adjacent Potrero Power Plant site. The tanks and associated piping were removed by 1996. The HDY is currently used by PG&E for vehicle parking, equipment storage, as well as stockpiling and temporary storage of drilling mud, concrete, soil, sand, gravel, and asphalt. This SMP is not intended to address the

## Exhibit C

handling and management of the soil or debris imported to the site as part of off-site utility maintenance operations.

### **POTENTIAL CONTAMINANTS (SMP – SECTION 3.0 AND APPENDIX A)**

Below is a summary of the contaminants that have been detected in shallow soil and/or groundwater above applicable screening criteria:

**Soil:** Arsenic has been detected in soil at concentrations greater than background, primarily in the northwest portion of the HDY. Additionally, total extractable petroleum hydrocarbons quantified as diesel and motor oil (TEPHd and TEPHmo, respectively), lead, and naturally occurring asbestos (NOA) have been detected. Sections 3.1.1 and 3.1.2 and Tables A-1 through A-6 provide a summary of the detected concentrations in soil.

**Groundwater:** TEPHd and TEPHmo have been detected above screening criteria. Section 3.1.3 and Tables A-7 through A-9 provide a summary of the detected concentrations in groundwater.

### **RECOMMENDED WORKER PROTECTION (SMP – SECTION 5.0 AND APPENDIX B)**

For intrusive work where soil and/or groundwater will be accessed, the following minimal worker protective clothing is recommended (note that non-PG&E workers are responsible for their own worker protection): work boots, gloves, long-sleeved shirts, hard hat, and safety glasses. The PPE required may be upgraded in the event that site conditions change.

Appropriate decontamination and personal hygiene procedures shall be followed.

### **DUST MANAGEMENT (SMP – SECTION 6.0)**

Because NOA is present, the dust control measures required by the California Air Resources Board, in CCR Title 17, Section 93105 are to be followed (see below for additional information on NOA regulation). In general, work disturbing less than 1.0 acre of soil requires specific work practices, whereas work disturbing greater than 1.0 acre require the preparation and approval of an Asbestos Dust Mitigation Plan prior to starting work. Additionally, the SFDPH is to be notified of construction projects that have the potential to generate dust as per Article 22B.

Generally, the procedures involve minimizing the amount of visible dust generated by keeping unpaved areas, disturbed areas, and stockpiled soils wetted, treated with a chemical dust suppressant or covered with appropriate material. Additional measures include washing equipment that has come into contact with the underlying soil to remove accumulated soil and dust and using measures to prevent the track-out of soil.

Depending upon the activity, dust monitoring, or additional dust measures, may need to be implemented.

### **SOIL AND WATER MANAGEMENT (SMP – SECTION 7.0)**

Because NOA is present, soil excavation requires dust control measures be implemented to prevent the formation of dust. Soil stockpiles shall be kept wet, treated with a chemical dust suppressant and/or covered with a suitable tarp to prevent wind erosion and dust generation. Stockpiles are to be secured (e.g., fenced) or otherwise protected to limit public access. Storm water management practices should be consistent with all applicable rules and regulations.

Soil encountered during excavation activities shall be stockpiled and evaluated for potential on-site re-use. This evaluation may require chemical testing of the material for metals and asbestos. Soil exhibiting physical evidence of environmental impacts (e.g., visibly impacted by hydrocarbons or exhibiting odors) will be segregated for characterization and off-site disposal.

Off-site disposal of soil requires that the soil be characterized before being removed from the site, as required by the receiving facility. It is likely that analyses for total and soluble metals, asbestos, PAHs, VOCs, and TEPHD/mo will be required. Given the presence of metals in the fill at the site, some soil may need to be disposed of at a licensed hazardous waste landfill.

Preparations shall be made to remove, store, characterize, and properly dispose of standing water from excavations during construction and maintenance trenching activities. Prior to disposal, the water should be tested in accordance with requirements of the receiving facility. In the event that the dewatering effluent is to be disposed to the storm system, a permit from the Water Board will likely be required.

Storm water pollution controls will be implemented to minimize runoff of sediment in storm water, which could include arsenic-affected sediment. If applicable (e.g., construction sites greater than 1-acre), a General Permit for Discharges of Storm Water Associated with Construction Activity (currently 2009-0009-DWQ as modified by 2010-0014-DWQ; General Permit) should be obtained from the State Water Resources Control Board. As per PG&E Procedure ENV-2201P-01, the PG&E Environmental Operations Storm Water Group shall be contacted regarding the need for PG&E specific requirements, such as erosion and sediment control plans for sites less than 1 acre, and the use of PG&E's qualified storm water pollution prevention plan developers (QSDs) and practitioners (QSPs).

**EXHIBIT F**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

(To be attached.)



**EXHIBIT F**  
**FORM OF**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Assignment”) is made as of the last date set forth below (the “Effective Date”), by the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“Assignor” or the “City”), acting by and through the Real Estate Division of its General Services Agency (the “Department”), and \_\_\_\_\_, a \_\_\_\_\_ (“Assignee”) (Assignor and Assignee, each a “Party”).

**RECITALS**

A. The City and Pacific Gas and Electric Company (“PG&E”) have entered into an Option Agreement for the Purchase and Sale of Real Property dated for reference purposes as of \_\_\_\_\_, 2014 (the “Option Agreement”), under which PG&E has granted to the City an exclusive and irrevocable option (the “Option”) to purchase the land commonly known as 1201 Illinois Street, located at 22<sup>nd</sup> and Illinois Streets in San Francisco, identified as Assessor’s Block 4110, Lot 008A and Block 4120, Lot 001, as more particularly described in *Exhibit A* (the “Property”). The Option Agreement includes certain environmental remediation measures applicable to the Optionee. Under the Option Agreement, the City has the absolute right to transfer its rights and obligations under the Option Agreement without PG&E’s consent or any payment or other consideration to PG&E. Capitalized words used but not defined in this Assignment have the meanings ascribed to them in the Option Agreement.

B. By Resolution No. 54-14, the Board of Supervisors of the City (the “Board”) urged the Department to obtain Board authorization to: (1) conduct a competitive process to identify a qualified bidder offering the highest purchase price for and assignment of rights under this Agreement and specified that the price must exceed the then-current, as-is appraised value of the Property plus any City costs incurred in connection with the Option; and (2) transfer the Option to the highest qualified bidder identified through the competitive process. In accordance with Resolution No. 54-14, the Department will report to the Board within 30 days after this Assignment is effective on the purchase price for the Option (the “Option Price”) and environmental measures that will apply to the Property upon sale.

C. [Revise as appropriate.] The Board authorized the Department enter into the Option Agreement and approved the form of Purchase and Sale Agreement (the “Purchase Agreement”) by Resolution No. XX-14. The Board further authorized the Department, by Resolution No. XX-XX, to: (1) conduct a competitive process; and (2) transfer the Option to the highest qualified bidder by this Assignment consistent with the Board’s direction in Resolution No. 54-14.

**AGREEMENT**

1. **Assumption of Rights and Obligations.** Upon the Effective Date of this Assignment, Assignee accepts the City’s assignment of the Option and assumes all of the City’s rights and obligations under the Option Agreement. In doing so, Assignee expressly acknowledges its understanding and acceptance of the terms of the Option Agreement and of the

form of Purchase Agreement, including all environmental remediation measures and obligations that apply or would apply to Assignee under the Option Agreement and Purchase Agreement. Except as provided in *Section 3*, this Assignment will terminate on the Expiration Date of the Option Agreement, as defined in Article 2 of the Option Agreement.

## 2. Indemnities.

(a) General Indemnification. In addition to the obligations set forth in *Section 2(b)*, Assignee must Indemnify the City and its Agents from all Losses incurred in connection with or arising directly or indirectly from conditions on the Property and actions (or failures to act) of Assignee Parties in relation to the Property.

(b) Environmental Indemnities. In addition to the obligations set forth in *Section 2(a)*, Assignee must Indemnify the City and its Agents from all Losses that are attributable to a Claim arising from the presence or alleged presence of any Hazardous Materials in, on, under, or about the Property (a "**Hazardous Material Claim**").

(c) Scope of Indemnity. The following apply to Assignee's indemnification obligations under this Assignment:

(i) Assignee must defend the Indemnified Parties against any Hazardous Material Claims and other Claims that are actually or potentially within the scope of the Indemnification provisions of this Agreement (each, an "**Indemnified Claim**") even if the Indemnified Claims may be groundless, fraudulent, or false. If an Indemnified Claim is made against an Indemnified Party that falls within the scope of the Indemnification provisions of this Agreement, that Indemnified Party must provide notice to Assignee of the Indemnified Claim within a reasonable time after learning of the Indemnified Claim and cooperate with Assignee in the defense of the Indemnified Claim. An Indemnified Party's failure to provide the notice, however, will not affect Assignee's Indemnification obligations except to the extent that Assignee is prejudiced by the failure.

(ii) Assignee, at its option, will be entitled to control the defense, compromise, or settlement of any Indemnified Claim through counsel of Assignee's own choice, subject to the Indemnified Party's right to object to counsel or approve any settlement requiring the Indemnified Party to contribute funds other than insurance proceeds. In all cases the Indemnified Party will be entitled to participate in the defense, compromise, or settlement of any Indemnified Claim at its own cost. If Assignee fails to take reasonable and appropriate action to defend the Indemnified Claim within a reasonable time after notice from the Indemnified Party describing in reasonable detail the nature of Assignee's alleged failure, the Indemnified Party will have the right promptly to hire outside counsel (or to use the City Attorney if the Indemnified Party is the City) to carry out the defense at Assignee's cost, and Assignee will be obligated to reimburse the Indemnified Party for its costs within 30 business days after the Indemnified Party's demand for payment.

(iii) Assignee will be relieved of this responsibility as to an Indemnified Party that, after notice and demand, does not cooperate in the defense



of any Indemnified Claim, including making witnesses and relevant documents and other records available to Assignee and entering into appropriate joint defense agreements to preserve and protect the confidentiality of shared information.

(d) Survival. The Indemnification obligations under this Agreement will survive the termination or expiration of this Assignment.

**3. Rescission under the Option Agreement.** Under Section 3.4 of the Option Agreement, Assignee will have the right to rescind its notice of the exercise of the Option, or the Purchase and Sale Agreement if in effect, without payment to PG&E of any fee, penalty, or other charge, and, upon rescission, the Option Agreement will remain in effect until its Expiration Date. Assignee's exercise of its right of rescission under the Option Agreement, or the Purchase and Sale Agreement if in effect, will terminate this Assignment, effective as of the effective date of the rescission, without further obligation or liability on the part of Assignee or the City.

**4. No Claim Against City.**

(a) City's Role. Assignee acknowledges and agrees with each of the following statements.

(i) By this Assignment, Assignee is assuming the City's right to exercise the Option under the Option Agreement to purchase the Property in its "As-Is" condition from PG&E under the terms of the Purchase Agreement.

(ii) The City is not in the chain of title for the Property, nor has the City ever been in possession or control of the Property, or had the opportunity to affect the condition of the Property.

(iii) If this Assignment terminates in accordance with **Section 3** before the Option Agreement's Termination Date, the Option will revert to the City without any obligation or liability of the City to Assignee.

(b) Waiver and Release. Assignee, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases the City and its Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Assignee may now have or that may arise on account of or in any way be connected with:

(i) the physical, geotechnical, or environmental condition of the Property (including soils and groundwater conditions) (the "**Existing Condition**");

(ii) any applicable Laws, including Environmental Laws;

(iii) any Claims or Hazardous Material Claims related to the Existing Condition of the Property; and

(iv) PG&E's performance of its obligations under the Option Agreement and the Purchase Agreement.

(c) Effect of Release. By initialing below, an authorized representative of Assignee acknowledges that Assignee is familiar with California Civil Code section 1542, which provides as follows:

***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR WHEN OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.***

Initials: \_\_\_\_\_

(d) Scope. Assignee agrees that the release given in this Section covers unknown Claims regarding the Existing Condition of the Property and applicable Laws pertaining to Existing Conditions. Accordingly, by entering into this Assignment, Assignee waives the benefits of Civil Code section 1542 and under any other statute or common law principle of similar effect.

(e) Survival. The release and waiver in this Section will survive termination or expiration of this Assignment.

**5. Limitations on Assignment.**

(a) Board Approval Required. Assignee must obtain the City's prior consent [by a resolution of the Board] to any Transfer to a Third Party (the "**Transferee**"), which the City may condition, grant, or withhold in its sole discretion. In this Assignment, "**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law:

(i) Assignee sells, assigns, encumbers, or otherwise Transfers any of its interest in this Assignment or in the Option Agreement;

(ii) any Person other than Assignee claims a right under the Option Agreement through Assignee;

(iii) Assignee dissolves, merges, consolidates, or otherwise reorganizes, or sells, assigns, encumbers, or otherwise Transfers cumulatively or in the aggregate 50 percent or more (25 percent or more if publicly traded) of its equity interests or business assets, such as goodwill, inventory, and profits; or

(iv) any permitted Transferee of Assignee sells, assigns, encumbers, or otherwise Transfers any of its interest in the Option Agreement.

(b) Action by Department. Assignee agrees that any of the following will be a reasonable basis for the City, through the Department, to withhold its consent without presenting a proposed Transfer to the Board for consideration:

(i) When Assignee requests the City's consent, Assignee is in default of its obligations under this Assignment.

(ii) The Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Assignment, the Option Agreement, and the Purchase Agreement.

(iii) The Transferee's intended use of the Property is inconsistent with the planned rezoning described in the Option Agreement or otherwise will affect any City interest materially and adversely.

(iv) The nature of the Transferee's use of the Premises would involve increased environmental risks or of fire or other casualty.

(c) Required Notice. Assignee must give least 60 days' prior notice of the proposed Transfer to the City, stating in the notice the legal name of the Transferee and the date on which the Transfer is proposed to close. Assignee's notice will not be effective until Assignee has provided the City with all information required under *Section 5(d)* and *Section 5(e)*.

(d) Assignee must attach the following documents to its notice:

(i) the Transferee's formation documents (if the Transferee is not a natural Person);

(ii) financial statements for the Transferee covering the 3 years before the proposed transfer date (or each year of the proposed Transferee's existence, if shorter);

(iii) Assignee's current financial statements; and

(iv) a copy of the proposed agreement of Transfer.

(e) Supplemental Information. Assignee also must provide:

(i) any other information, documentation, or evidence that the City requests to enable the City to evaluate the Transfer and the Transferee; and

(ii) if any of the Transfer terms are modified before the Transfer is effective, a new notice (which will trigger a new review period) and all relevant documentation for any modified terms.

(f) City Conditions. The City will provide notice to Assignee of the City's decision within 60 days after the effective date of Assignee's notice. The City will specify in its notice any conditions to the City's consent, if given. If the City consents to the Transfer, Assignee must close the Transfer on the terms stated in Assignee's notice and the City's consent within 90 days after the City notice to Assignee. If the Transfer does not close within the 90-day period, then the City's consent will expire. The City's consent to one Transfer will have no effect on any other proposed Transfer.

(g) Effect of Noncompliance. Any Transfer that does not comply fully with this Article will be:

(i) an incurable breach of this Assignment causing this Assignment to terminate automatically; and

(ii) void as to the City and this Assignment.

(h) Reimbursement to the City. Assignee agrees to reimburse the City for all costs, including attorneys' fees, that the City incurs to review, investigate, process, document, disapprove, or approve any Transfer request.

6. **No Refund.** Assignee agrees that it will have no claim to or right to a refund of the Option Price for any reason.

7. **No Brokers.** Neither Party has had any contact or dealings regarding the Option or this Assignment, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other Person who could claim a right to a commission or finder's fee in connection with the Option or this Assignment. If any broker or finder perfects a Claim for a commission or finder's fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes the Claim will be responsible for the commission or fee and will Indemnify the other Party from all claims, costs, and expenses (including reasonable attorneys' fees and costs) incurred by the Indemnified Party in defending against the same. This Section will survive the Expiration Date.

## 8. **Interpretation.**

(a) **Exhibits.** Whenever an "Exhibit" is referenced, it means an attachment to this Assignment unless otherwise specifically identified. All exhibits are incorporated in this Assignment by reference.

(b) **Captions.** Whenever a section, article, or paragraph is referenced, it refers to this Assignment unless otherwise specified. The captions preceding the articles and sections of this Assignment and in the table of contents (if any) have been inserted for convenience of reference only and do not define or limit the scope or intent of any provision of this Assignment.

(c) **Words of Inclusion.** The use of the term "including," "such as," or words of similar import when following any general or specific term, statement, or matter will not be construed to limit the term, statement, or matter to the stated terms, statements, or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation," are used. Rather, the stated term, statement, or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter.

(d) **Gender; Correlating Terms.** Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(e) **Days.** References to days mean calendar days unless otherwise specified, except if the last day on which a Party must give notice, respond to a notice, or take any other action under this Agreement occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

(f) **Cooperative Drafting.** This Assignment has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party will be considered the drafter of this Assignment, and no presumption or rule that an ambiguity will be construed against the Party drafting the clause (including California Civil Code § 1654) will apply to the interpretation or enforcement of this Assignment.

(g) Costs. Unless specified otherwise, the Party on which any obligation is imposed in this Assignment will be solely responsible for paying all costs incurred in the performance of the obligation.

(h) Agreement References. Wherever reference is made to any provision, term or matter "in this Assignment," "herein," "hereof," or words of similar import, the reference will be deemed to refer to all reasonably related provisions of this Assignment in the context of the reference, unless the reference refers solely to a specific numbered or lettered provision of this Assignment.

(i) Laws. References to all Laws, including specific statutes, relating to the rights and obligations of either Party mean the Laws in effect on the Effective Date and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under this Assignment are outstanding, whether or not foreseen or contemplated by the Parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

## 9. General Provisions.

(a) Successors and Assigns. This Assignment is binding upon and will inure to the benefit of the successors and permitted assigns of each Party.

(b) No Third-Party Beneficiaries. This Assignment is made and entered into for the sole benefit of the Parties and their successors and permitted assigns. No other Person will have or acquire any right or action under this Assignment.

(c) Approvals. Each Party's approval or consent under this Assignment must be in writing and, unless specified otherwise, may not be unreasonably withheld, conditioned, or delayed. Unless otherwise specified, a Party's failure to give an approval or consent within any specified time frame will not be deemed to be the Party's approval or consent.

(c) Counterparts. This Assignment may be executed in counterparts, each of which, together with all other counterparts, will be deemed to be an original.

(d) Entire Agreement. This Assignment (including the exhibits) constitutes the entire agreement between the Parties with respect to the subject matter of this Assignment and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Assignment. No parol evidence of any prior draft of this Assignment or of any other agreement will be permitted to contradict or vary the terms of this Assignment.

(e) Amendment. Neither this Assignment nor any of its terms may be terminated, amended, or modified except by a written instrument executed by the Parties. The Parties agree to execute and, if necessary, acknowledge any other documents they agree are necessary or reasonably required to express the intent of the Parties or otherwise effectuate this Assignment.

(f) Governing Law and Jurisdiction. This Assignment is governed by, and will be construed and interpreted in accordance with, the laws of the State of California. Assignee and Assignor each irrevocably consents to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

(g) Attorneys' Fees. If either Party fails to perform any of its respective obligations under this Assignment or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Assignment, then the defaulting Party or the Party not prevailing in the dispute, as the case may be, must pay any and all costs incurred by the other Party on account of the default or in enforcing or establishing its rights under this Assignment, including court costs and reasonable attorneys' fees and costs. Attorneys' fees and costs incurred by either Party in enforcing a judgment in its favor under this Assignment will be recoverable separately from and in addition to any other amount included in the judgment, and the attorneys' fees and costs obligation is intended to be several from the other provisions of this Assignment and to survive and not be merged into any judgment. For purposes of this Assignment, the reasonable fees of attorneys of the Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

(h) Relationship of the Parties. Assignor is not, and none of the provisions in this Assignment may be deemed to render Assignor, a partner in Assignee's business or joint venturer or member in any joint enterprise with Assignee. Neither Party may act as the agent of the other Party. This Assignment is not intended nor may it be construed to create any third-party beneficiary rights in any Third Party, unless otherwise expressly provided.

(i) Severability. If any provision of this Assignment, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of the provision will not affect any other provision of this Assignment or the application of the provision to any other Person or circumstance, and the remaining portions of this Assignment will continue in full force and effect, unless enforcement of this Assignment as so modified would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Assignment.

(j) Cumulative Remedies. All rights and remedies of either Party under this Assignment will be cumulative, unless provided otherwise.

(k) Survival of Indemnities. Termination or expiration of this Assignment will not affect the right of either Party to enforce any indemnities under this Assignment, the ability to collect any sums due, or any other provision of this Assignment that expressly survives its termination or expiration.

(l) Sunshine Ordinance. Assignee understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the California Public Records Act (Gov. Code §§ 6250 *et seq.*), this Assignment and any and all records, information, and materials submitted to the City will be public records subject to public disclosure and that the City may disclose any records, information, and materials it receives in connection with this Assignment.

(m) Conflicts of Interest. By executing this Assignment, Assignee acknowledges that it is familiar with Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and

Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of any of those provisions, and agrees that if Assignee becomes aware of any such fact during the term of this Assignment, Assignee will immediately notify the City.

(n) Notification of Limitations on Contributions. By executing this Assignment, Assignee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any Person who contracts with City to sell or lease any land or building to or from City whenever the transaction would require the approval by a city elective officer, the board on which that city elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to: (1) the applicable city elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for the contract or six months after the date the contract is approved. Assignee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Assignee further acknowledges that the prohibition on contributions applies to each Assignee; each member of Assignee's board of directors, and Assignee's chief executive officer, chief financial officer and chief operating officer; any Person with an ownership interest of more than 20% in Assignee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Assignee. Additionally, Assignee acknowledges that Assignee must inform each of the Persons described in the preceding sentence of the prohibitions contained in Section 1.126. Assignee further agrees to provide to the City the names of each Person, entity, or committee described above upon request.

(o) Non-Liability of City Officials, Employees, and Agents. Nothing in this Assignment will cause any elective or appointive board, commission, member, officer, employee, or Agent of the City to be personally liable to Assignee, its successors and assigns, in the event of any default or breach by Assignee or for any amount that may become due to Assignee, its successors and assigns, or for any obligation of Assignee under this Assignment.

(p) Notices. Any notice, including any request for consent, response to a request for consent, approval, or demand required or permitted to be given under this Agreement, must be in writing and will be deemed to have been given: (i) upon receipt by hand delivery; (ii) one day after being deposited with a reliable overnight courier service; or (iii) two days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required. Notices must be delivered to the addresses below. Either Party may change its address for notice by delivering no less than 5 days' notice of its new address to the other Party in the manner specified in this section.

**10. Defined Terms.** The following definitions will apply to this Assignment.

"Affiliate" means one Person and any other Person from time to time controlled by, or under common control of the first Person, where control means ownership, directly or indirectly,

of 50 percent or more (25 percent or more if publicly traded) of the outstanding voting securities or capital stock of the other Person, or any other comparable equity or ownership.

**“Agents”** when used with reference to either Party, or any other Person, means the officers, directors, employees, agents, contractors, and subcontractors of the Party or other Person, and their respective agents, heirs, legal representatives, successors, and assigns. Agents of the City include any elective and appointed board, commission, member, and official, departments, agencies, divisions, and every other Person acting on behalf of the City with respect to the Property.

**“Assignee”** is defined in the preamble.

**“Assignee Parties”** means Assignee and its Affiliates, Agents, and Invitees to the extent that any of these Persons undertake activities on the Property with the express or implied approval of Assignee.

**“Assignment”** is defined in the preamble.

**“Assignor”** is defined in the preamble.

**“Board”** is defined in Recital B.

**“Business day”** means a day other than a Saturday, Sunday, or holiday observed by the City.

**“City”** is defined in the preamble.

**“Claim”** means a demand or action seeking equitable relief, mandamus, specific performance, or any other relief available at law or in equity for Losses arising from: (1) any accident, injury to, or death of any Person, or loss or damage to or destruction of any property or any other pecuniary interest, including goodwill, intellectual property, and business and leasing opportunities occurring at any time from any cause; or (2) a breach by Assignee under this Assignment, the Option Agreement, or the Purchase Agreement; or (3) Assignee’s acts or omissions in relation to due diligence, construction, operations, and maintenance with respect to the Property; or (4) any work performed by or on behalf of Assignee in relation to the Property; or (5) Assignee’s failure to obtain or comply with any Regulatory Approval; or (6) mechanic’s, materialman’s, or other liens; or (7) claims for a finder’s fee or broker’s commission for this Assignment; or (8) an Environmental Regulatory Action or claim made or threatened by any Third Party against any Party relating to a Loss resulting from the presence, Release, or threatened Release of any Hazardous Materials in, on, under, or about the Property, including Losses based in common law.

**“Department”** is defined in the preamble.

**“Effective Date”** is defined in the preamble.

**“Environmental Law”** means any Law relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Property.

**“Environmental Regulatory Action”** means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

**“Environmental Regulatory Agency”** means the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Department of Labor, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay



Regional Water Quality Control Board, the Division of Occupational Safety & Health of the California Department of Industrial Relations, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, and any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

**“Environmental Regulatory Approval”** means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Property and any closure permit.

**“Existing Condition”** is defined in Section 4(b)(i).

**“Handle”** means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

**“Hazardous Material”** means any substance, waste, or material that is now or in the future designated by any Environmental Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos-containing materials, and presumed asbestos-containing materials, whether or not part of the structure of any existing or future improvements on the Property, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

**“Hazardous Material Claim”** is defined in Section 2(b).

**“Indemnified Claim”** is defined in Section 2(c)(i).

**“Indemnified Party”** means any Person entitled to be Indemnified under this Assignment.

**“Indemnify”** means to indemnify, protect, defend, and hold harmless forever.

**“Investigate”** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under, or about the Property or the environment, and includes preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

**“Invitee”** means the clients, customers, invitees, patrons, guests, members, tenants, licensees, permittees, concessionaires, vendors, suppliers, and assignees of a Person, any other Person whose rights arise through them, and members of the general public present on any property under a Party’s direct or indirect control.

**“Law”** means any present or future federal, state, regional, or local law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including City construction requirements), any Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Property, and any recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Property, whether in effect when this Assignment is executed or at any later time and whether or not within the present contemplation of the Parties, and as amended, supplemented, clarified, or corrected from time to time.

**“Losses”** means compensation, damages, contribution, cost recovery, demand, direct and vicarious liability, fine, judgment and award, lawsuit or other proceeding, lien, loss, penalty, right, settlement, interest, and attorneys’ fees and costs incurred in relation to a Claim. For purposes of Section 2(b), the definition of “Losses” includes costs incurred for any Investigation or Remediation whether or not required by any Environmental Regulatory Agency or to restore the affected area to its condition before the act or circumstance that triggered Remediation obligations and sums a Party pays in response to Hazardous Material Claims and Environmental Regulatory Actions.

**“Option”** is defined in Recital A.

**“Option Agreement”** is defined in Recital A.

**“Option Price”** is defined in Recital B.

**“Party”** is defined in the preamble.

**“Person”** means any natural person, corporation (including any business trust), limited liability entity, partnership, joint venture, or any other entity or association, or governmental or other political subdivision or agency.

**“PG&E”** is defined in Recital A.

**“Property”** is defined in Recital A.

**“Purchase Agreement”** is defined in Recital C.

**“Regulatory Agency”** means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, any Environmental Regulatory Agency, departments, offices, and commission of the City (each in its regulatory capacity), and any other governmental agency now or later having jurisdiction over the Property.

**“Regulatory Approval”** means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

**“Release”** means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about any part of the Property or the environment.

**“Remediate”** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional City requirements. “Remediation” also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

**“Third Party”** means a Person other than a Party.

**“Transfer”** is defined in Section 4(a).

**“Transferee”** is defined in Section 4(a).

[Remainder of page intentionally left blank.]

Executed as of the last date written below.

**[ASSIGNEE NAME]:**

\_\_\_\_\_  
a \_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Address(es) for Notice:

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Address(es) for Notice:

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

Name: \_\_\_\_\_

Board of Supervisors Resolution No. XX



**EXHIBIT G**

**ENVIRONMENTAL RISK MANAGEMENT MEASURES**

(To be attached.)



## EXHIBIT G

### ENVIRONMENTAL RISK MANAGEMENT MEASURES

The Hoedown Yard Option Agreement and form of Purchase and Sale Agreement will require the following approach to remedial action and environmental risk management.

#### 1. **General Requirements.**

##### a. Land Use Covenant Amendment.

Pacific Gas and Electric Company (PG&E) agrees to allow the City and County of San Francisco (City) or a subsequent third-party owner of the Hoedown Yard to seek San Francisco Bay Regional Water Quality Control Board (Water Board) approval to amend the Covenant and Environmental Restriction on Property currently encumbering the Hoedown Yard (Land Use Covenant). The purchaser will be required periodically to certify to PG&E and the City regarding compliance with the following requirements and any other requirements the Water Board imposes as conditions to amending the existing Land Use Covenant. Each certificate must be supported by the written report of an independent third-party onsite construction monitor.

##### b. Site Characterization for Existing Uses.

The City and PG&E (parties) acknowledge that PG&E's past testing of conditions at the Hoedown Yard has characterized the site to the satisfaction of the Water Board, which the parties agree is adequate for its current use. PG&E agrees not to conduct further testing of the Hoedown Yard unless required by an order of a regulatory agency.

##### c. Newly Discovered Conditions.

PG&E agrees not to impose its own land use covenant restricting future uses of the Hoedown Yard. If a potential purchaser or future owner, through site investigation, discovers new conditions, the party making the discovery will be required to disclose the new condition to PG&E, the City, and the Water Board and any other regulatory agency with jurisdiction and to follow the agency's direction on whether further investigation, remediation, monitoring, or other measures will be imposed by order or through amendments to the Land Use Covenant. PG&E, the City, and the potential purchaser or future owner will have the right to submit comments to the Water Board for consideration in its deliberations.

##### d. Indemnification of PG&E.

The City will require any purchaser of the Hoedown Yard to indemnify and hold harmless PG&E from liability, including liability for personal injury, property damage, or further cleanup, during and after the construction of any new uses on the Hoedown Yard. The purchaser's indemnification obligation to PG&E must be secured by a letter of credit in the amount of \$1 million for a period of three years, beginning on the date a certificate of occupancy is first issued for any new building at the Hoedown Yard.

2. **Authorized Land Uses and Required Remedial Actions.**

<b>Possible New Uses</b>	<b>Remediation</b>
High-density residential; temporary lodging; recreational use areas underlain by hardscape, commercial, institutional.	Install and maintain <b>Durable Cover</b> . Implement <b>Institutional Controls</b> .
Public open space covered by hardscape.	Same as above.
Public open space covered by "softscape," including landscaping; recreational use areas not using hardscape surfaces.	Install and maintain 3-foot layer of <b>Clean Soil</b> underlain by a <b>Demarcation Layer</b> between native soil and ground surface. The <b>Clean Soil</b> layer will cover landscaped areas, including raised landscaping planters, and line tree pits. The thickness of <b>Clean Soil</b> layer will be increased if needed to include root bearing zones and below-grade irrigation systems.

a. Acceptable forms of Durable Cover.

All forms of Durable Cover must meet applicable standards of the San Francisco Public Works Code, the Port Building Code, and any other applicable rules or regulations. Acceptable forms of Durable Cover include:

- Buildings and building foundations.
- Streets and sidewalks.
- Hardscapes, parking areas, pathways or similar areas paved with concrete, asphalt, stone, or other material of sufficient durability to withstand usage and prevent exposure of native soil. Cover for pedestrian paths must include at least a 4-inch thick layer of aggregate base beneath at least a 2-inch layer of asphalt, concrete, stone, or crushed or decomposed stone paving. Paving stones with interstitial exposed native soil will be subject to requirements for softscape.
- Clean Soil above Demarcation Layer. The Demarcation Layer must provide a visual indicator that distinguishes Clean Soil above the Demarcation Layer from underlying native soil. The Demarcation Layer will serve as a visual and physical deterrent to further excavation. It need not be impermeable to vapor or water, but must be resistant to penetration by hand tools.

b. Land Use Controls.

- School, daycare, and hospital uses will be prohibited.
- Private open space at grade will be prohibited; private roof top, balcony, or similar open space will be permitted.



- Except as specified in this document, any permitted uses will be permitted on the ground floor as well as above ground floor.
- Use of groundwater for any purpose other than dewatering will be prohibited.
- Growing plants for human consumption in native soil will be prohibited.
- Property owner/operator will remove identified areas of arsenic-impacted soil to achieve site-specific background concentration of arsenic as defined and summarized in Report of Results – Additional Soil Investigation, Hoe Down Yard (AMEC, 4/12/11).

c. Disclosure.

- Property owner/operator will notify all tenants and contractors of site conditions and required Institutional Controls and require notification of subtenants and subcontractors.
- Property owner/operator will disclose environmental conditions and Institutional Controls to residents.

d. Institutional Controls to be implemented by property owner/operator.

- Controlled access prior to and during construction.
- Environmental health and safety plans for construction and maintenance workers.
- Dust control during construction and maintenance.
- Stormwater pollution prevention during construction.
- Regular inspection, maintenance, and repair of Durable Covers
- Implementation of a Water Board-approved revised Risk Management Plan.
- The purchaser will be required to implement or participate in a funding mechanism that provides sufficient funds for maintenance and capital repair of public use areas in accordance with the Risk Management Plan for the life of the public use areas.

**3. Definitions.**

“Native soil” or “existing soil” means soil present at the site, regardless of its provenance, as of the date PG&E transfers title to the Hoedown Yard as contemplated by the Option Agreement.

“Clean Soil” means soil that will be used on site in a manner that presents potential for exposure to future site users, such as soil used to create the 3-foot thick layer of Clean Soil required for landscaped areas. Imported soil that will be placed under one of the acceptable forms of Durable Cover does not have to meet standards for Clean Soil. Clean Soil must meet either:

(a) the prevailing standards, i.e. (i) Environmental Screening Levels as defined by the Water Board and published at [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/esl.html](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html); or (ii) California Screening Levels as defined by Cal/EPA and published at <http://oehha.ca.gov/risk/soil.html>; or

(b) Water Board-approved, site-specific background levels applicable to the planned land use (i.e., less than or equal to commercial standards for commercial site use, and less than or equal to residential standards for residential site use of the Hoedown Yard.

**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>Pacific Gas and Electric Company (PG&amp;E)</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Pacific Gas and Electric Company Board of Directors: Lewis Chew, Anthony F. Earley Jr., Fred J. Fowler, Maryellen C. Herringer, Christopher P. Johns, Richard C. Kelly, Roger H. Kimmel, Richard A. Meserve, Forrest E. Miller, Rosendo G. Parra, Barbara L. Rambo, Barry Lawson William	
PG&E President: Christopher P. Johns PG&E Chief Financial Officer: Dinyar B. Mistry PG&E Chief Operating Officer: n/a	
Contractor address: 77 Beale Street, San Francisco CA 94105	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$8,283,726.
Describe the nature of the contract that was approved: City transferable option to acquire the Hoedown Yard from PG&E.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

