COST SHARING AGREEMENT II

INADMISSIBLE UNDER FED. R. EVID. 408

This Cost Sharing Agreement II ("Agreement") is effective as of October 1, 2014 ("Effective Date"), and is entered into between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("the City") acting by and through its Recreation and Park Department (RPD), and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("PG&E") (the City and PG&E are sometimes individually referred to herein as a "Party" and sometimes collectively referred to herein as "the Parties"), with respect to property, including Bay sediments, in the Marina East Harbor or Gashouse Cove Area of the City and County of San Francisco, more accurately identified on the map attached hereto as Exhibit "A" as incorporated by reference herein ("the Site").

WHEREAS, the Site currently is owned by the City and is under the control and jurisdiction of the City, and is managed as a park and marina by RPD;

WHEREAS, PG&E and others previously owned and operated a coal gasification plant in the vicinity of the Site that produced materials which may be found at the Site;

WHEREAS, as the result of subsurface investigations the presence of chemical compounds, including polycyclic aromatic hydrocarbons ("PAHs"), has been discovered in subsurface soils and sediments underlying the Site, and PAHs are known to be produced by coal gasification plants and by other sources;

WHEREAS, on January 18, 2001, the City commenced an action against PG&E for recovery of response costs and declaratory relief under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA") and other laws, arising out of the presence of the chemical compounds at the Site, entitled *City and County*

of San Francisco v. Pacific Gas & Electric Company, No. C 01-0316 SBA, in the United States District Court for the Northern District of California ("the CERCLA Action");

WHEREAS, pursuant to PG&E's notice to the Court and the City on April 11, 2001 that PG&E had filed a voluntary petition under Chapter 11 of Title 11 of the United States Code, in the United States Bankruptcy Court, the Court stayed proceedings in the CERCLA Action;

WHEREAS, PG&E emerged from bankruptcy and the stay on any legal proceedings against PG&E was lifted on April 21, 2004; under the plan of reorganization, the above claim passed through bankruptcy unimpaired which means that for all practical purposes the claim and lawsuit can proceed as if there had not been a bankruptcy;

WHEREAS on June 2, 2004, the Court entered an Order Dismissing Action without prejudice, in order to allow the Parties to attempt to carry out the terms and purposes of this Agreement without having to expend their resources on litigation, while giving either Party the right to move to reopen the case and have the matter rescheduled within 365 days of the Order Dismissing Action, or within an additional period as the Court may allow upon request;

WHEREAS, the Parties do not agree with one another about who is responsible for the chemical compounds on the Site, including responsibility for investigation and remediation of the Site;

WHEREAS, without admitting any fact, responsibility, fault, liability, or any other matter or issue in connection with the site, the Parties recognize that there are substantial efficiencies in addressing responsibility for the chemical compounds on the Site on a cooperative basis;

WHEREAS, the Parties to this Agreement entered into the following: a Cost Sharing Agreement (defining "Shared Costs") effective as of October 10, 2004; a series of five agreements to extend cost sharing through August 10, 2013; and a sixth agreement to extend cost sharing until terminated by either Party upon 30 days written notice, and increasing the Shared

Costs amount from $500,000 to $950,000 (the Cost Sharing Agreement and six agreements to extend cost sharing shall collectively herein be referenced as the "Original CSA");

WHEREAS, the sixth agreement to the Original CSA provided that Shared Costs incurred or expended after the effective date of the sixth agreement "shall either be allocated on a 50-50 basis or paid entirely by either Party, until all Shared Costs Activities are complete, not to exceed a total amount of $950,000";

WHEREAS, following the sixth agreement to the Original CSA, pursuant to a request by the City, PG&E agreed to pay 100% of the Shared Costs up to an amount not to exceed $950,000, which costs are subject to the reallocation provisions set forth therein;

WHEREAS, pursuant to this Agreement, the Parties intend for PG&E to continue to pay 100% of the Shared Costs, up to an amount not to exceed $2,533,000, which costs shall not include any amount incurred after receipt from the Dredge Material Management Office ("DMMO") of an approved dredge plan for the Site and receipt of a project permit from the Bay Conservation and Development Commission ("BCDC"), absent written amendment, and all of which costs are subject to the reallocation provisions set forth herein.

WHEREAS, the intent of this Agreement is to continue with Site investigation, planning and other activities contemplated by the Original CSA in a timely and cost-effective manner while the Parties reserve their rights to assert their respective positions concerning the CERCLA Action;

WHEREAS, the Parties each understand that this Agreement is contingent upon approval by the San Francisco Recreation and Parks Commission and the San Francisco Board of Supervisors each acting in its sole discretion;

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants contained herein, the Parties hereby agree as follows:

1. Subject to the provisions of this Agreement, "Shared Costs" are those costs incurred or expended for the services of contractors or consultants hired by the City or PG&E and approved in advance by both the City and PG&E in writing in performing the following with respect to the Site: sampling and analyses of environmental media; planning of dredge design and dredged material disposal; planning and design of the harbor re-construction; applications for and participation in permit processes related to dredge and re-construction activities; discussion and negotiation with regulatory agency/personnel (including, without limitation, the SF Bay Conservation and Development Commission, the Bay Area Regional Water Quality Control Board, the Department of Toxic Substance Control, and the Dredged Materials Management Office); and exchange of technical information and expertise concerning the project, as defined below ("Shared Costs Activities").

2. "Shared Costs" shall also include costs for regulatory oversight, administrative fees, and costs for Shared Cost Activities, but shall not include taxes imposed by regulatory agencies having jurisdiction over the Site. All Shared Costs incurred or expended pursuant to the Original CSA referenced above remain subject to the reallocation provisions set forth in paragraph 8, below.

3. (a) This Agreement is intended in part to facilitate a continuing process of Site investigation, planning, and other activities contemplated by the Original CSA. To that end, for purposes of this Agreement only, the Parties have agreed that the Shared Costs pursuant to this Agreement shall be paid 100 per cent by PG&E and shall not include any amount in excess of $2,533,000 or any amount incurred or expended after receipt from the Dredge Material Management Office ("DMMO") of an approved dredge plan for the Site and receipt of a project permit from the Bay Conservation and Development Commission ("BCDC"), unless and to the extent that the Parties agree otherwise in writing to increase said amount in accordance with the

provisions of paragraph 7 below. The Shared Costs pursuant to this Agreement are subject to the reallocation provisions set forth in paragraph 8, below.

(b) The Parties will arrange with each Shared Costs contractor for all invoices submitted pursuant to this Agreement to be sent to both Parties at the address for notices provided in paragraph 15 below, with each invoice to show the actual total as well as a detailed breakdown of Shared Costs to be paid by the Parties. Both City and PG&E contractors and consultants shall perform work. PG&E shall not be responsible for any costs incurred or expended for the services of City contractors or consultants unless PG&E has provided written approval to the City for such services as Shared Costs, prior to the City's award of each such contract ("Approved City Contractor(s) and/or Consultant(s)"). Likewise, any costs paid directly by PG&E to contractors and/or consultants retained independently by PG&E ("PG&E Contractor(s) and/or Consultant(s)") must be preapproved by the City in order to constitute a Shared Cost, chargeable under this Agreement against the not-to-exceed amount set forth in Paragraph 3.(a), above. For purposes of this Agreement only, once the designated representatives of the City and PG&E agree that an invoice is appropriate for payment, then 100 percent of the payments for all invoices submitted by the City to PG&E pursuant to this Agreement will be remitted directly to the City on a timely basis by PG&E. All payments made by PG&E pursuant to this Agreement remain subject to the reallocation provisions set forth in paragraph 8, below.

(c) The Parties agree that within sixty (60) days after the DMMO approves the Site dredge plan and receipt by the City of a project permit from the BCDC, the Parties shall meet and confer regarding (i) the preparation of an amendment to this Agreement ("Amendment") to include the costs of sediment remediation, capping, containment and monitoring and (ii) allocation of Shared Costs under the Original CSA and this Agreement. Such Amendment shall be approved in accordance with paragraph 7 below.

4. Both Parties shall be entitled to communicate fully with any Shared Costs contractor. All written reports and communications from the date of this Agreement forward pertaining to Shared Costs Activities shall be sent simultaneously by each Shared Costs contractor to both Parties.

5. The City retains sole decision-making authority with respect to permitting steps, final design, depths and other operational factors for the renovated harbor. Except as specifically set forth immediately above, the Parties intend to make decisions regarding the Shared Cost Activities for the Site on a cooperative basis and based on all available information. PG&E and the City both agree to exercise good faith in cooperating with each other to adhere to timelines for environmental review and permit applications. If the Parties disagree about a decision, they shall attempt reasonably and in good faith to resolve the disagreement. If the disagreement is not resolved, the Parties may continue to proceed jointly under this Agreement with such activities that are not subject to the disagreement. If the disagreement is not resolved, and either of the Parties reasonably determines that the Parties cannot continue to proceed jointly under this Agreement with Shared Costs Activities that are not subject to disagreement, that Party may terminate this Agreement by giving written notice of termination to the other Party as provided in paragraph 15 below; provided, however, that the Party terminating this Agreement shall remain liable to the other Party for all Shared Costs arising before the termination, subject to the reallocation provisions set forth in paragraph 8, below. In the event of breach of this Agreement, the liability of the breaching Party shall be limited to that Party's remaining portion of its contribution to the Shared Costs, subject to the reallocation provisions set forth in paragraph 8, below.

6. Neither Party shall assert that by incurring any Shared Costs that have been approved in advance by the other party pursuant to paragraph 1 of this Agreement, a Party has failed to comply with the National Contingency Plan, 40 C.F.R. Part 300.

7. This Agreement constitutes the entire agreement between the Parties hereto concerning the matters specifically covered herein. Any amendment or modification to this Agreement, including any amendment to modify the cap on Shared Costs established in paragraph 3(a), shall be subject to the mutual written agreement of the Parties. City's agreement may be made upon approval from the Recreation and Park Commission; provided, however, that any amendment calling for expenditure of revenues from the City Treasury in an amount exceeding $10 million shall be effective only upon approval from the City's Board of Supervisors unless the Board has already approved an appropriation or authorization to accept and expend grant funds supporting such expenditures.

8. (a) In the event that the dispute as to responsibility for investigation and remediation of the Site, as described herein, is settled by a submission to alternative dispute resolution procedures and/or federal or state court action, each Party agrees to refund to the other party any portion of the payment of Shared Costs made pursuant to Sections 3 and 5 of this Agreement by the Party to receive the refund that is in excess of the final award and/or judgment of the dispute resolution representative and/or court, as modified through post-trial motions or appeal, imposed upon that Party; provided, however, that such payment shall be made only after all motions for new trial or other post trial motions and appeals have been exhausted.

(b) The Parties agree that by this Agreement and any acts taken hereunder, neither PG&E nor the City has in any way or manner admitted any liability for any Site condition, assessment investigation or remediation costs relating to the Site, and that the fact that PG&E and the City have entered into this Agreement and/or made these payments shall be

inadmissible for any and all purposes in any alternative dispute resolution or state or federal court action which might be brought relating to the dispute described herein, with the sole and exclusive exception being the prove-up in an alternative dispute resolution or state or federal court action of the refund set forth in Paragraph 8 (a), *supra*. This Agreement shall have no effect on the attribution of responsibility or determination of share of responsibility in any settlement negotiations, alternative dispute resolution proceeding, or court proceeding, except that after responsibility and liability has been determined that amount of Shared Costs paid by the City and/or PG&E shall be taken into account as provided in this Section 8 hereof.

(c) Save and except the sole and exclusive exception set forth in Paragraph 8 (a) herein, this Agreement shall be inadmissible on any issue in dispute herein, whether before regulatory bodies, alternative dispute resolution proceedings or state or federal courts.

(d) The City and PG&E agree that the monies paid by the City and PG&E under the provisions of this Agreement shall be credited against any final settlement of the dispute described herein, including any alternative dispute resolution award or court judgment relating to the settlement of said dispute.

9. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and affect.

10. The Parties and each of them deny any and all liability with respect to the Site. No part of this Agreement, no joint efforts by the Parties hereunder, nor any application by PG&E or by the City to the California Public Utilities Commission ("CPUC") or to any other governmental agency for funds or for authority to collect rates, charges or assessments to repay the applicant for its portion of Shared Costs, shall: 1) constitute or be construed as an admission by the other Party of any fact, law, legal responsibility or liability; or 2) be admissible in any trial, regulatory proceeding, or alternative dispute resolution proceeding relative to the liability,

damages or other issues between the Parties for the assessment of or cleanup of contamination at the Site, save and except as set forth in Section 8 hereof. This Agreement is not intended, nor can it be construed, to create rights in persons or entities not parties to the Agreement.

11. Unless and until (a) this Agreement is terminated as provided in Section 5 hereof or (b) Shared Costs reach $2,533,000 or a greater amount agreed to by the Parties pursuant to Section 3 or (c) receipt from the DMMO of an approved Site dredge plan and from BCDC of a project permit, or (d) the anniversary of the Effective Date of this Agreement in 2024, or such earlier date agreed to by the Parties (herein said item (a), (b) and (c) are collectively referred to as "the Claim Events"), the City shall not seek to prosecute the CERCLA Action, and neither of the Parties shall commence any other action or proceeding against the other Party to recover past or future damages or for any other relief on account of any existing contamination of the Site, except an action or proceeding for breach of this Agreement. During the period that this Agreement remains in effect, and as consideration for the City's agreement not to prosecute the CERCLA Action during that period, PG&E agrees to suspend the statute of limitations governing the CERCLA Action, and to assert no other, defense, such as laches, waiver or estoppel, based on the passage of time from the date of the court's dismissal without prejudice of the CERCLA Action to the date that this action may be reopened or another action arising out of the same circumstances is filed. Provided that the Party has paid its stated allocation of shared costs as required by this Agreement, then after the occurrence of anyone of the Claim Events, said Party may seek to reopen this action or commence any other action or proceeding against the other Party to recover damages or any other relief on account of any contamination of the Site, including, without limitation, the CERCLA Action, or an action or proceeding to recover all or any portion of any Shared Costs paid by the Party pursuant to this Agreement.

12. This Agreement shall be interpreted pursuant to California law.

13. The Parties affirm that their representatives have read and fully understand this Agreement, and that the below-signed individuals have and hereby exercise the power to bind their respective principals.

14. This Agreement shall become effective upon its execution by PG&E and the City and approval as to its form and legality by the City Attorney and by the designated PG&E attorney, and upon approval by the San Francisco Recreation and Parks Commission ("Commission") and the San Francisco Board of Supervisors ("Board"), each acting in its sole discretion.

15. Notices. Any notice given under this Agreement shall be effective only if in writing and given by delivering notice to the postal addresses and electronic mail address set forth below or to such other addresses as either Party may designate as its new addresses for such purpose by notice given to the other in accordance with this Section in advance of the effective date of such change:

San Francisco Recreation and Park Department
City & County of San Francisco
Capital Improvement Division
30 Van Ness Ave., 3rd Floor
San Francisco, CA 94102
ATTN: Mary Hobson (Mary.Hobson@sfgov.org)

Pacific Gas and Electric Company
Environmental Remediation Department
3401 Crow Canyon Rd, Bldg 414
San Ramon, CA 94583-1319ATTN: Darrell Klingman, Project Manager

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year below written.

CITY AND COUNTY OF SAN FRANCISCO,
A municipal corporation

By: _____
Philip A. Ginsburg, General Manager, RPD

Dated: 4/2/15

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

PACIFIC GAS AND ELECTRIC COMPANY,
A California Corporation

By: _____

Dated: 04/01/2015

Approved as to Form:

By: _____

END OF DOCUMENT