

COST SHARING AGREEMENT

INADMISSIBLE UNDER FED. R. EVID. 408

The effective date of this Cost Sharing Agreement ("Agreement") is dated as of August 10, 2004 ("Effective Date"), and is entered into between the City and County of San Francisco, a municipal corporation ("the City"), and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("PGandE") (the City and PGandE 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 used as a park and marina;

WHEREAS, PGandE and others previously owned and operated a coal gasification plant in the vicinity of 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;

WHEREAS, on January 18, 2001, the City commenced an action against PGandE 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 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, pursuant to PGandE's notice to the Court and the City on April 11, 2001 that PGandE 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, PGandE emerged from bankruptcy and the stay on any legal proceedings against PGandE 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, 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 wish to continue Site investigation, planning and other activities in a timely and cost-effective manner while reserving their rights to assert their respective positions concerning the CERCLA Action;

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 PGandE and approved in advance by both the City and PGandE 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; applications for and participation in permit processes related to dredge activity; discussion and negotiation with regulatory agency/personnel (including, without limitation, 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 dredge planning and disposal, as defined below ("Shared Costs Activities").

2. "Shared Costs" shall not include any cost incurred or expended by either the City or PGandE prior to the Effective Date of this Agreement. Shared Costs shall 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.

3. Shared Costs incurred or expended from and after the Effective Date, up to a total amount of \$500,000, shall be allocated on a 50-50 basis (\$250,000 maximum for PGandE and (\$250,000 for the City), until all Shared Costs Activities are complete. The Shared Costs shall not include any amount in excess of said \$500,000 or any amount incurred or expended after the anniversary of this Agreement in 2006, unless and to the extent that each Party agrees otherwise in writing at its option to increase said amount or extend said date. The Parties will arrange with each Shared Costs contractor for all invoices to be sent to both Parties, each invoice to show the actual total as well as the breakdown of Shared Costs to be paid by the City and by PGandE. Payments will be remitted directly to the Shared Costs contractors on a timely basis, and each of the Parties will provide the other with copies of such remittances.

Notwithstanding any other provision in this Agreement, (1) PGandE shall be obligated

only to pay on a 50-50 basis costs that are incurred in accordance with the provisions of this Agreement, and (2) PGandE shall not be required to make any payment prior to expiration of 100 days after the date PGandE executes this Agreement, provided that PGandE agrees to pay to the Shared Costs contractors or to the City, as appropriate, 10% annual interest from the 31st day of PGandE's receipt of a bill to the date of payment of the bill if the bill is paid by PGandE more than 30 days after PGandE receives the bill.

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 timing of permitting steps, final design layout, 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. PGandE agrees to exercise good faith in cooperating with the City 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; provided, however, that the Party terminating this Agreement shall remain liable to the other Party for Shared Costs arising before the termination. In the event of breach of this Agreement,

the liability of the breaching Party shall be limited to that remaining portion of its contribution to the Shared Costs.

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, and shall not be amended, supplemented or modified unless in writing signed by all parties. Such modification shall only be effective upon execution of a written modification by the Parties.

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 thereunder, neither PGandE 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 PGandE 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 PGandE 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 PGandE agree that the monies paid by the City and PGandE 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 PGandE 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 \$500,000 or a greater amount agreed to by the Parties pursuant to

Section 3 or (c) the anniversary of the Effective Date of this Agreement in 2006, or such later date agreed to by the Parties pursuant to Section 3 (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, PGandE 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 any one 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.

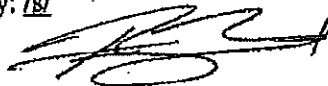
14. This Agreement shall become effective upon its execution by PGandE and the City and approval as to its form and legality by the City Attorney and by the designated PGandE attorney.

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: /s/ YOMI AGUNBIADE, ACTING E.M.



Dated: AUG. 10, 2004

Approved as to Form:  
Dennis J. Herrera  
City Attorney

By:   
Deputy City Attorney

PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation

By: /s/

Dated:

Approved as to Form:

By \_\_\_\_\_



executed the day and year below written.

CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation

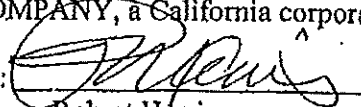
By: /s/

Dated:

Approved as to Form:  
Dennis J. Herrera  
City Attorney

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

PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation

By:   
Robert Harris  
Vice President Environmental  
Affairs

Dated: 8/6/07

Approved as to Form:

By   
Juan M. Mayo Attorney