

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 17, 2013

Advice Letter 3334-G/4129-E

Brian K. Cherry
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
PO Box 770000
San Francisco, CA 94177

Subject: Agreement With the Santa Clara Valley Transportation Authority ("VTA") For Future Relocation of PG&E's Facilities, In Accordance With General Order 96-B, Section 8.2.3. (Attachment 2 and 3)

Dear Mr. Cherry:

Advice Letter 3334-G/4129-E is effective October 24, 2012 with the following additional requirement:

Per agreement with Energy Division staff, PG&E will provide an annual report on this Master Agreement. For each project where costs are allocated to parties under the terms of the approved VTA Master Agreements, PG&E shall provide certain information in an annual report to the Commission. The Annual Report shall include the following information for each Project:

- Project Name
- Project Location
- In-service Date:
- Costs Identified (Estimated and Actual)
- Total Cost
- Cost Allocated to VTA
- Cost Allocated to PG&E

The first report shall be submitted by PG&E to the Director of the Energy Division by March 1, 2014 shall continue until the last project completed under these Master Agreements has been reported.

Sincerely,

A handwritten signature in black ink, appearing to read 'ER', with a stylized flourish extending from the end.

Edward Randolph
Director, Energy Division
California Public Utilities

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 17, 2013

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Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
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Edward Randolph
Director, Energy Division
California Public Utilities

October 24, 2012

Advice 3334-G/4129-E

(Pacific Gas and Electric Company ID U 39 M)

Public Utilities Commission of the State of California

Subject: Agreements With The Santa Clara Valley Transportation Authority (“VTA”) For Future Relocation of PG&E’s Facilities, In Accordance With General Order 96-B, Section 8.2.3. (Attachments 2 and 3)

Purpose

Pacific Gas and Electric Company (PG&E) has entered into two master agreements with Santa Clara VTA to address the billing procedures and allocation of costs associated with the relocation or rearrangement of utility facilities to accommodate certain VTA rail and rapid transit projects. Relocation of PG&E’s facilities to accommodate an applicant’s project is ordinarily performed at the applicant’s expense, unless the agreements or permits that memorialize PG&E’s land rights for the facilities provide for relocation at PG&E’s expense. VTA’s projects traverse numerous properties and the relative priority of rights between VTA and PG&E for the requested relocation work will vary in different locations. The master agreements address two general circumstances. First, where cost responsibility is established by the nature and terms of PG&E’s land rights for the facilities, costs are allocated as previously agreed and accepted. In the case of conflicts with VTA’s projects where PG&E’s facilities are located within the public right of way, the cost responsibility for the relocation has resulted in prior litigation between the parties. VTA, PG&E (and other parties) informally resolved the litigation by entering into agreements under which the relocation costs associated with the concurrent use of the public right of way were shared equally between VTA and PG&E.

The Master Agreements (Attachments 2 and 3) extend the same principles that were reached in the settlement of the prior litigation and apply them to VTA’s current projects. The Master Agreements do not arise from any legal proceeding, but reflect the mutual agreement of the parties to informally resolve any dispute relating to the cost responsibility to accommodate VTA’s current projects. PG&E is therefore notifying the Commission of the master agreements pursuant to General Order 96-B, Section 8.2.3, and requests the Commission issue disposition that these agreements are reasonable and in the public interest.

Background

VTA is a public entity organized pursuant to Public Utilities Code sections 100000 et seq. VTA is planning future improvements on private property and within the public right of way associated with VTA's projects described below which will require PG&E to rearrange or relocate its electric and gas facilities. PG&E is willing to accommodate VTA's projects and perform the necessary work under the terms and conditions of the two master agreements.

The agreements for which PG&E seeks Commission approval are Master Agreements between the Company and VTA, regarding the relocation of electric and gas facilities in conflict with 1) VTA's project for the extension of the Bay Area Rapid Transit heavy rail line between Fremont and San Jose (the "SVBX Project"); and 2) VTA's future improvements for the Santa Clara-Alum Rock Rapid Transit and Capitol Expressway Projects within San Jose and Santa Clara County (the "Rapid Transit Project"). (Attachments 2 and 3)

The relocation of the Company's existing facilities is governed by Electric and Gas Tariff Rules 15.I.1 and 15.H, which provide the cost to relocate facilities at the request of or for the convenience of the applicant is performed at the applicant's expense.¹ In some cases, the responsibility for utility relocation costs may vary depending on the property rights for PG&E's facilities at each of the locations where impacts from the SVBX Project may require relocation.

The master agreements with VTA address terms and conditions for the necessary relocation or rearrangement of the Company's facilities in physical conflict with VTA's SVBX Project and Rapid Transit Project. The master agreements establish detailed procedures for the planning, design, construction and billing arrangements for the relocation of the Company's facilities. The master agreements provide that VTA will reimburse the Company for a proportionate share of the actual costs incurred to relocate the facilities in conflict with the SVBX Project and Rapid Transit Project. The proportionate share is determined by the Company's land rights for its existing facilities.

Where the Company's facilities are located in easements, licenses or permits, the terms of such instruments will determine each party's proportionate share. In the case of an easement, VTA would be allocated 100% of the relocation costs, based on the principle that the easement provides PG&E the permanent right to occupy the easement area. In some cases, the easement, license or permit issued to PG&E may have express

¹ Electric Tariff Rule 15.I.1 provides, in pertinent part, "Any relocation or rearrangement of PG&E's existing facilities, at the request of, or to meet the convenience of an Applicant or customer, and agreed upon by PG&E, normally shall be performed by PG&E. ... Applicant or customer shall be responsible for the costs of all related relocation, rearrangement or other work." Substantially the same language appears in Gas Tariff Rule 15.H.1: "Any relocation or rearrangement of PG&E's existing facilities, at the request of, or to meet the convenience of an Applicant or customer, and agreed upon by PG&E, normally shall be performed by PG&E, at Applicant's expense. ... Applicant or customer shall be responsible for the costs of all related relocation, rearrangement or removal work."

provisions requiring PG&E to relocate at its own expense when necessary to accommodate the property owner's use of the property. Under the master agreements, if VTA is the grantor or successor in interest to the grantor of any easement, license or permit, and the instrument expressly provides for relocation at the Company's expense, the Company will be allocated 100% of the relocation costs. For locations where the Company's facilities are located within the public right of way VTA and the Company will allocate the relocation costs equally between them on a 50/50 basis. PG&E's facilities located within the public right of way are pursuant to franchises agreements with the cities of Fremont, Mountain View, San Jose, Milpitas, and the Counties of Santa Clara. In the case of VTA, its use of the public right of way arises by virtue of its status as a transit district under Public Utilities Code sections 100000 et seq.

The cost allocation formula in the master agreements derives from an earlier agreement between VTA, PG&E and Pacific Bell entered into in 1990 to address utility relocation costs associated with the extension of VTA's Tasman Corridor Light Rail Project. This agreement was reached following an informal resolution of litigation between the parties over their respective obligations to relocate facilities to accommodate VTA's light rail project. PG&E and VTA have since continued this cost-sharing practice on subsequent VTA light rail projects and highway projects.

PG&E and VTA entered into the master agreement for VTA's SVBX Project in September, 2010. After entering into the master agreement for the SVBX, PG&E began work on the planning and design of the relocation of its facilities to accommodate the project. Beginning in July, 2012, PG&E started construction work to accommodate the SVBX Project. The SVBX Project is 15 miles in length of the SVBX Project and PG&E anticipates that work will continue over the course of the next several years. The master agreement for the SVBX Project is for a term of ten years to allow sufficient time to complete the future relocation work.

The master agreement for VTA's Rapid Transit Project was entered into in June, 2012. After entering into the master agreement, PG&E began design work on the Rapid Transit Project. PG&E anticipates that work will continue on the Rapid Transit Project over the course of the next several years.

The transactions between the Company and the District consist of: 1) SVBX Project, and 2) Rapid Transit Project. (Attachments 2 and 3) The gas and electric List of Contracts and Deviations have been revised to reflect the agreement; the affected tariff sheets are provided as Attachment 1. Because the master agreements apply only to the existing PG&E facilities in conflict with these VTA projects, this filing will not affect any rate change, cause the withdrawal of service, or conflict with any rate schedule or rule. The master agreements recognize that any future service facilities will be provided in accordance with PG&E's tariffs and rates in effect at that time.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than **November 13, 2012**, which is 20 days from the date of this filing. Protests should be mailed to:

CPUC Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Effective Date

PG&E requests the Commission issue a resolution approving this advice letter effective **November 23, 2012**, which is 30 days from the date of this filing. PG&E submits this as a Tier 3 filing.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and/or via U.S. mail to parties shown on the attached list. Address changes to the General Order 96-B service list should be directed to PG&E at email address PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov.

Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.

Handwritten signature of Brian Cherry in cursive script, followed by the initials "/IG".

Vice President, Regulatory Relations

Attachment 1

Attachment 2: Master Agreement Between Santa Clara Valley Transportation Authority and PG&E for Future Relocation of PG&E Facilities To Accommodate the Silicon Valley Berryessa Extension (SVBX) Project

Attachment 3: Master Agreement Between Santa Clara Valley Transportation Authority and PG&E for Future Relocation of PG&E Facilities To Accommodate the Santa Clara – Alum Rock Rapid Transit (SC-AR) and Capitol Expressway Improvement Projects

cc: Santa Clara Valley Transportation Authority

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

☒ ELC

☒ GAS

☐ PLC

☐ HEAT

☐ WATER

Contact Person: Igor Grinberg

Phone #: 415-973-8580

E-mail: ixg8@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

☐

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **3334-G/4129-E**

Tier: 3

Subject of AL: **Agreements With The Santa Clara Valley Transportation Authority ("VTA") For Future Relocation of PG&E's Facilities, In Accordance With General Order 96-B, Section 8.2.3. (Attachments 2 and 3)**

Keywords (choose from CPUC listing): Compliance and Agreements

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: N/A

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: N/A

Confidential information will be made available to those who have executed a nondisclosure agreement: N/A

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: N/A

Resolution Required? ☒ Yes ☐ No

Requested effective date: **November 23, 2012**

No. of tariff sheets: 6

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: Gas & Electric Contracts and Deviations

Service affected and changes proposed: Addition of new contracts

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division

Tariff Files, Room 4005

DMS Branch

505 Van Ness Ave., San Francisco, CA 94102

EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Brian K. Cherry, Vice President, Regulatory Relations

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

**ATTACHMENT 1
Advice 3334-G**

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
29938-G	LIST OF CONTRACTS AND DEVIATIONS (Continued) Sheet 7	17234-G
29939-G	GAS TABLE OF CONTENTS Sheet 1	29933-G
29940-G	GAS TABLE OF CONTENTS Sheet 7	29337-G



LIST OF CONTRACTS AND DEVIATIONS (Continued)

Sheet 7

Name and Location of Customer		Most Comparable Regular Tariff			
PG&E Installation Reference No.	Type or Class of Service	Execution and Expiration Dates	Commission Authorization Number and Date	Schedule or Rule No.	Contract Difference
MISSION TRAIL REGION (Cont'd.)					
<u>Counties and Cities (Cont'd.)</u>					
City of Santa Clara Improvement Project 170/170A Marriott Business Park, Unit 1	Firm	9-7-76 ---	Res. G-2134 9-4-77	Gas Rule 15 Sect. B	Cost of Ownership Fund
City of Santa Clara Marriott Commercial Park Improvement Project Mission College Blvd. Santa Clara	Firm	5-3-77 ---	Res. G-2115 7-12-77	Gas Rule 15	Cost of Ownership Fund
City of Santa Clara Oakmead - Unit III Improvement Project 171	Firm	5-17-77 ---	Res. G-2128 8-10-77	Gas Rule 15 Sect. E-7	Cost of Ownership Fund
City of Santa Clara Oakmead Development	Com/Ind	1-3-78 ---	Res. G-2226 6-16-78	---	Amend Contract Effective August 10, 1977
City of Santa Clara Marriott Business Park Unit No. 2, Santa Clara	Firm	2-14-78 ---	Res. G-2227 6-13-78	Gas Rule 15 Sect. E-7	Cost of Ownership Fund
City of San Jose Orchard Business Park Improvement District No. 77-144SJ, Phase II San Jose	Firm	11-2-78 ---	Res. G-2264 3-22-79	Gas Rule 15 Sect. C and E-7	Cost of Ownership Fund
City of Milpitas KSP Industrial Park Oakmead North Valley Improvement Project 2333 Milpitas	Firm	9-16-80 ---	--- 3-9-81	Gas Rule 15 Sect. C and E-7	Cost of Ownership Fund
City of Palo Alto Santa Clara County	Resale	11-20-87	--- 1-27-88	Gas Rule 2	Monthly Cost of Ownership
City of Gilroy Forest St. Assessment Dist. Santa Clara County	Res.	7-21-95	---	Gas Rule 15	Gas Main Extension— Competitive Bidding
<u>Other Public Agencies</u>					
Santa Clara Valley Transportation Authority - SVBX Project	Commercial	9-20-2012 10 Years	Resolution number and date to be added upon Commission approval	Rule 15	Facility Relocation Cost Responsibility
					(N) (N)
Santa Clara Valley Transportation Authority - SC-AR Project	Commercial	6-17-2012 10 Years	Resolution number and date to be added upon Commission approval	Rule 15	Facility Relocation Cost Responsibility
					(N) (N)

(Continued)

Advice Letter No: 3334-G
 Decision No.

Issued by
Brian K. Cherry
 Vice President
 Regulatory Relations

Date Filed October 24, 2012
 Effective October 24, 2012
 Resolution No. _____



Pacific Gas and Electric Company
San Francisco, California
U 39

Revised
Cancelling Revised

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

29939-G
29933-G

GAS TABLE OF CONTENTS

Sheet 1

TITLE OF SHEET	CAL P.U.C. SHEET NO.	
Title Page	29939-G	(T)
Rate Schedules	29934,29927-G	
Preliminary Statements.....	29928,29619-G	
Rules	29737-G	
Maps, Contracts and Deviations.....	29940-G	(T)
Sample Forms	29289,29738,27262,28662,29290*,28503-G	

(Continued)

Advice Letter No: 3334-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed October 24, 2012
Effective _____
Resolution No. _____



GAS TABLE OF CONTENTS

Sheet 7

TITLE OF SHEET

CAL P.U.C. SHEET NO.

Maps, Contracts and Deviations

SERVICE AREA MAPS:

Boundary Lines.....	17893-G
Fresno and Kings Counties.....	5166-G
Kern County..... 20917,20918,20919,20920,20921,10850,10851,9420,9421,10852,10853,10854,17893-G	
Enhanced Oil Recovery and Related Cogeneration.....	12067-G
Shasta and North Tehama Counties.....	7277-G
San Bernardino County.....	12926,12927-G
Ione Service Area	7689-G
Former McClellan Air Force Base Service Area.....	20388-G
Presidio of Monterey, Monterey County	22436-G

LIST OF CONTRACTS AND DEVIATIONS:

20211,13247,13248,28466,17112,22437,**29938**,14425,13254,14426,13808,29284,20390, (T)
16287,29333,29053, 29334,14428,13263,14365,29335,24897,16264,13267-G

(Continued)

**ATTACHMENT 1
Advice 4129-E**

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
32080-E	LIST OF CONTRACTS AND DEVIATIONS (Continued) Sheet 18	12009-E
32081-E	ELECTRIC TABLE OF CONTENTS Sheet 1	32078-E
32082-E	ELECTRIC TABLE OF CONTENTS MAPS, CONTRACTS AND DEVIATIONS Sheet 21	31157-E



LIST OF CONTRACTS AND DEVIATIONS
 (Continued)

Sheet 18

Name and Location of Customer		Most Comparable Regular Tariff			
PG&E Installation Reference No.	Type or Class of Service	Execution and Expiration Dates	Commission Authorization Number and Date	Schedule or Rule No.	Contract Difference
<u>MISSION TRAIL REGION (Cont'd.)</u>					
<u>Other Public Agencies</u>					
Santa Barbara County Water Agency Santa Maria Valley Conservation Dist.	General Service	5-19-59 Indefinite*2	G.O.96.X.B. 7-22-59	Rule 15	Monthly Charge for Excess Facilities
Santa Clara County Transit District	Railway	9-23-87 20 Years	Res. E-3049 9-23-87	Rule 9 Schedule E-20	Ceiling Rate; Totalized Billing Demand
Santa Clara Valley Transportation Authority – SVBX Project	Commercial	9-20-2010 10 Years	Resolution number and date to be added upon Commission approval	Rule 15	Facility Relocation Cost Responsibility
Santa Clara Valley Transportation Authority – SC-AR Project	Commercial	6-17-2012 10 Years	Resolution number and date to be added upon Commission approval	Rule 15	Facility Relocation Cost Responsibility
Santa Clara Valley Water District	Coml	2-16-88	---	Rule 15	Equivalent One-Time Payment For Cost of Ownership

(N)
 |
 |
 (N)
 |
 |
 (N)
 |
 |
 (N)

*1 to *4 See last page of Electric Contracts and Deviations Section for explanation of footnotes.

(Continued)

Advice Letter No: 4129-E
 Decision No.

Issued by
Brian K. Cherry
 Vice President
 Regulatory Relations

Date Filed October 24, 2012
 Effective October 24, 2012
 Resolution No. _____

18H8



ELECTRIC TABLE OF CONTENTS

Sheet 1

TABLE OF CONTENTS

SCHEDULE	TITLE OF SHEET	CAL P.U.C. SHEET NO.	
	Title Page	32081-E	(T)
	Rate Schedules	31846, 31847, 31858, 31849 ,31850, 31851,31852, 31541, 31853-E	
	Preliminary Statements	31854,29900,30376,31855,31139,30846,32063-E	
	Rules	30402, 32079, 32054-E	
	Maps, Contracts and Deviations.....	32082-E	(T)
	Sample Forms	30680*,31610,32055,31154,31611,32056,30513,30682,32076,30683,29920,29921-E	

(Continued)



ELECTRIC TABLE OF CONTENTS **MAPS, CONTRACTS AND DEVIATIONS**

Sheet 21

TITLE OF SHEET		CAL P.U.C. SHEET NO.
Maps, Contracts and Deviations		
SERVICE AREA MAPS		
Boundary Lines.....		10534-E
Map A Lassen Municipal Utility District/Surprise Valley.....		10423-E
Map B Sacramento Municipal Utility District.....		4524-E
Map C Modesto Irrigation/Turlock Irrigation District.....		4525-E
Map D SoCalEdison.....		4671-E
Map E Palo Alto.....		4672-E
Map F Redding.....		13310-E
Map G Healdsburg.....		13079-E
Map H Lompoc.....		13372-E
Map I Gridley.....		13780-E
Map J Presidio of Monterey, Monterey County.....		21634-E
LIST OF CONTRACTS AND DEVIATIONS		
13819, 13794, 21541, 21542, 12000, 12001, 13672, 12003, 19350, 11435, 12004, 20977, 19351, 12006, 21635, 21636, 29591, 32080 , 11191, 12010, 11193, 11194, 11195, 12969, 31155, 12012, 29592, 12014, 29670, 13296, 12955, 19353, 12018, 12019, 12020, 12021, 12022, 12023, 30666, 17259, 12026, 13092, 11211, 12027, 12028, 16703, 12030, 12031, 14035, 29593, 12032, 23621, 11219, 12034, 20831, 12036, 11223, 11986, 11987, 26321, 16898, 11227-E		(T)

(Continued)

Attachment 2:
Master Agreement Between Santa Clara
Valley Transportation Authority and PG&E
for Future Relocation of PG&E Facilities To
Accommodate the Silicon Valley Berryessa
Extension (SVBX) Project

**Master Agreement Between
Santa Clara Valley Transportation Authority and
PG&E for Future Relocation of PG&E Facilities
To Accommodate the Silicon Valley Berryessa Extension (SVBX) Project**

This Master Relocation Agreement ("Master Agreement") is entered into between the Santa Clara Valley Transportation Authority ("VTA"), 3331 North First Street, Building A, San Jose, California 95134-1927 and Pacific Gas and Electric Company ("PG&E"), whose mailing address is PG&E, 111 Almaden Boulevard, San Jose, CA 95115, collectively referred to as the "Parties," with reference to the following facts:

RECITALS.

- A.** WHEREAS, VTA is a public entity organized and existing in the County of Santa Clara pursuant to Public Utilities Code sections 100000 et seq.;
- B.** WHEREAS, PG&E is a public utility as defined in Public Utilities Code section 216 and is organized, existing and doing business in the State of California;
- C.** WHEREAS, PG&E provides natural gas and electric service to the public;
- D.** WHEREAS, in and on Public Rights of Way within the respective cities herein described, PG&E owns and operates:
 - 1. Certain electric facilities installed and operated pursuant to City of Fremont, ordinance No. 30 (April 17, 1976); City of San Jose ordinance No. 15880 (September 20, 1971), No. 21677 (May 18, 1984) and No. 26914 (June 1, 2003), City of Milpitas ordinance No. 12 (April 20, 1954), , and County of Santa Clara ordinance No. 638 (September 19, 1952);
 - 2. Certain natural gas facilities installed and operated pursuant to City of Fremont, ordinance No. 31 (April 17, 1976); City of San Jose ordinance No. 15879 (September 20, 1971), No. 21676 (May 18, 1984) and No. 26913 (June 1, 2003), City of San Jose ordinance No. 13 (April 20, 1954), and County of Santa Clara ordinance No. 4.29 (January 13, 1984);
 - 3. Certain electric and natural gas facilities in the City of San Jose, and City of Mountain View, pursuant to Section 19 of Article IX of the Constitution of the State of California as said section existed prior to its amendment on October 10, 1911;
 - 4. Certain electric and gas facilities installed and operated pursuant to easements with rights prior to Public Rights of Way within the respective cities and counties.
- E.** WHEREAS, VTA purchased a corridor of land in December 2002 from Union Pacific Railroad Company ("UP") extending between Fremont, California in the vicinity of UP Milepost 2.61 and San Jose, California in the vicinity of UP Milepost 17.49, a distance of

approximately 15 miles, and generally known as the WP Milpitas Line ("VTA Corridor");

- F. WHEREAS, VTA is planning future improvements within the VTA Corridor; in and on Public Rights of Way within the Cities of Fremont, Milpitas and San Jose and on adjacent private properties; known as the Silicon Valley Berryessa Extension (SVBX) Project ("SVBX Project");
- G. WHEREAS, some of the "PG&E facilities" are located within the SVBX Project Area and may be required to be rearranged or relocated to accommodate the SVBX Project;
- H. WHEREAS, the responsibilities for the cost and expense of relocation of PG&E facilities may vary depending upon the terms and conditions of the property rights covering the PG&E facilities at each of the several locations where impacts from the SVBX Project may require relocation;
- I. WHEREAS, PG&E is willing to accommodate the SVBX Project under the terms and conditions specified in this Master Agreement and under the terms and conditions of any existing easements, permits, licenses or franchise rights granted to PG&E that cover the PG&E facilities that are being impacted by the SVBX Project.

NOW, THEREFORE, for valuable consideration, VTA and PG&E agree as follows:

1. DEFINITIONS.

The following terms are herein defined:

- 1.1 "Actual Cost" means actual and reasonable costs, as determined under the Uniform System of Accounts approved by the Federal Energy Regulatory Commission, incurred by PG&E in performing the Relocation specified in the Notice to Owner.
- 1.2 "Betterment" means that future Relocation costs shall not include those charges for "betterment," which, for purpose of this Master Agreement, shall be defined as provided for in 18 Code of Federal Regulations (4-7-93 Edition), Part 101-Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, Electric Plant Instructions, paragraph 10 C (3): *"The primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity"*. "Betterment" shall not include technological improvements (such as the use of fiber optic cable) which are able to achieve greater usefulness, efficiency, durability or capacity at costs equal to or less than the costs of a "like-for-like" replacement or relocation. Betterment does not include differences caused by changes in manufacturing standards, availability of materials, or regulatory requirements. VTA shall not be obligated to pay for any portion of any Betterment.

- 1.3 “Cost Estimate” means a detailed estimate of the costs of a Relocation prepared pursuant to Section 5.4.
- 1.4 “Delineate” means to indicate the approximate horizontal and vertical location of a facility. PG&E may provide its drawings to VTA in satisfaction of a request to Delineate the PG&E Facilities.
- 1.5 “Fixed Cost” means a fixed sum equal to the Cost Estimate for performing the Relocation specified in the Notice to Owner.
- 1.6 “Hazardous Material(s)” means any hazardous substance, hazardous material or hazardous waste as defined under state or federal law.
- 1.7 “Notice to Owner” means the written notice given pursuant to Section 4.1 instructing PG&E to proceed with the Relocation and designating the Relocation Plan to be used.
- 1.8 “Master Agreement” means this document which contains the terms and conditions which apply to all Relocations of PG&E facilities that may be required to be rearranged to accommodate the SVBX Project.
- 1.9 “PG&E Facilities” means electric and gas utility facilities installed, operated and maintained to provide essential service to the public.
- 1.10 “PG&E’s Project Manager” means the person designated by PG&E to perform the functions of PG&E’s Project Manager specified in this Master Agreement.
- 1.11 “Proportionate Share”, for purposes of Design or Construction, means the share of all reasonable, appropriate and actual or fixed costs of Relocation to be borne by a party in accordance with Sections 2.1 and 2.2.
- 1.12 “Proposed Project” means the heavy rail transportation system to be constructed within the VTA Corridor between the southerly end of the Warm Springs BART Station in Fremont, Alameda County and Highway 101 in San Jose, Santa Clara County.
- 1.13 “Public Rights of Way” means the public highways, streets, roads, ways, alleys and other places in which the public has a right of passage. As used in this Master Agreement, Public Rights of Way generally do not include the VTA Corridor except in the case of those certain locations where Public Rights of Way cross the VTA Corridor, e.g., a dedicated public street extends across the VTA Corridor.
- 1.14 “Public Utility Easement” means an area of land designated in a deed from a private party or on a parcel map or subdivision map as a public utility easement, public service easement, and other public easements dedicated under Government Code Section 66475, whether or not accepted by a local agency. A Public Utility Easement is not a Public Right of Way.

- 1.15 "Relocation" means permanently or temporarily moving, lowering, or raising PG&E facilities or otherwise clearing a conflict between the PG&E facilities and the SVBX Project.
- 1.16 "Relocation Plan" means detailed plans and specifications for specific Relocations prepared by PG&E based on plans for VTA's Proposed Project provided by VTA. A Relocation Plan contains sufficient detail to allow preparation of an accurate estimate of costs for the Relocation.
- 1.17 "Revised Notice to Owner" means a written notice given to PG&E approving a deviation from the approved Relocation Plan.
- 1.18 "SVBX Project Area" means the geographic area affected by the Relocation as delineated pursuant to Section 5.1.1.
- 1.19 "VTA Corridor" means the corridor of land VTA purchased from UP in December 2002 extending between Fremont, California, in the vicinity of UP Milepost 2.61 and San Jose, California, in the vicinity of UP Milepost 17.49, a distance of approximately 15 miles, and generally known as the WP Milpitas Line.
- 1.20 "VTA's Project Manager" means the person designated by VTA to perform the functions of the VTA's Project Manager specified in this Master Agreement.
- 1.21 "Wasted Work" means design or construction work performed by PG&E, upon written direction from VTA, for a Relocation rendered useless or unnecessary as a result of VTA's cancellation and/or scope of changes as agreed by both parties.

2. PROPORTIONATE SHARE.

- 2.1 All costs for Relocation of PG&E Facilities that are located within and on Public Rights of Way, or where Public Rights of Way cross the VTA Corridor, pursuant to the franchises, rights and privileges described in Paragraph D, subparagraphs 1, 2 and 3 of the Recitals hereof are to be paid for by VTA and PG&E in equal shares.
- 2.2 Notwithstanding Section 2.1, all costs for Relocation of PG&E Facilities that are currently located under an easement, license or permit, and not pursuant to the franchises, rights and privileges described in Paragraph D, subparagraphs 1, 2 and 3 of the Recitals hereof, the terms of such easement, license or permit shall determine the Proportionate Share. If VTA is the grantor or successor-in-interest to the grantor of any such easement, license or permit, and the terms of such instrument expressly provide for relocation at PG&E's expense, PG&E's Proportionate Share of cost shall be 100%. For locations of PG&E Facilities under an easement, license or permit, in which VTA is not the grantor or successor-in-interest to the grantor, VTA's Proportionate Share of cost shall be 100%. For Relocation of those PG&E Facilities which are located in areas

pursuant to Public Utility Easements and non-perfected claims of prescription on the property of third parties, VTA's Proportionate Share is 100% of such costs.

3. PROJECT MANAGER AUTHORITY.

- 3.1 VTA shall designate a person to act as VTA's Project Manager. VTA represents that such person has the authority to bind VTA with respect to the functions to be carried out by VTA's Project Manager under this Master Agreement and any subsequent Notice to Owner.
- 3.2 PG&E shall designate a person to coordinate with PG&E's Project Manager. PG&E represents that such person will serve as the point of contact to obtain the necessary approvals and authority to bind PG&E with respect to the functions to be carried out by PG&E's Project Manager under this Master Agreement and any subsequent Notice to Owner.

4. NOTICE TO OWNER.

- 4.1 A Notice to Owner will be prepared to define specific utility relocation scopes of work throughout the SVBX Project. These Notices to Owner will call for the utility owner to perform the construction functions required to complete the Relocation in the order specified in Section 6 herein.
- 4.2 All other aspects of the work covered by each Notice shall be in accordance with the terms and conditions of this Master Agreement.

5. PLANNING AND DESIGN.

5.1 Initial Assessment

- 5.1.1 VTA shall provide PG&E with preliminary drawings depicting the Project Area.
- 5.1.2 PG&E shall furnish utility drawings that Delineate those facilities of PG&E that are located within the Project Area. Upon request, PG&E shall provide to VTA an estimate of the time and cost it will require to perform this service.
- 5.1.3 PG&E shall accumulate its costs to Delineate its facilities pursuant to Section 5.1.2, and VTA shall pay its Proportionate Share of those costs regardless of whether VTA requests any Relocation.
- 5.1.4 VTA shall thereafter prepare final drawings that Delineate all surface and subsurface structures, including those of PG&E, located within the Project Area and superimposing VTA's Proposed Project.

5.2 Preliminary Design

- 5.2.1** If the drawings prepared pursuant to Section 5.1.4 indicate a potential conflict with any of PG&E's facilities, VTA shall positively locate the horizontal and vertical location of the potentially conflicting facilities in order to identify physical conflicts. PG&E shall cooperate with VTA in developing this information.
- 5.2.2** VTA's Project Manager and PG&E shall consult as necessary to decide whether identified physical conflicts can best be eliminated by PG&E's rearranging the conflicting facility or VTA's adjusting its preliminary plans or a combination of both.
- 5.2.3** PG&E shall accumulate its costs for providing these preliminary design services, and VTA shall pay for its Proportionate Share of those costs regardless of whether VTA requests any Relocation.

5.3 Advanced Design

- 5.3.1** Upon the request of VTA's Project Manager, PG&E shall prepare a Relocation Plan. The plan shall divide the rearrangement into manageable elements and for each element shall include the location, length, size and/or capacity, type, class, and pertinent operating conditions and design features of existing facilities and proposed final and temporary facilities, including any proposed changes to them; and the limits of right-of-way to be acquired from, by, or on behalf of PG&E. Upon request, PG&E shall provide to VTA an estimate of the time it will require to perform this service.
- 5.3.2** In any Relocation PG&E shall be entitled to equivalent facilities, including equivalent land rights for land rights surrendered (e.g. if facilities are being relocated from a private easement, a new private easement for the replacement facilities must be provided). If the approved Relocation Plan contemplates that additional land rights be acquired, VTA shall convey or cause to be conveyed to PG&E all necessary land rights in a form satisfactory to PG&E to permit PG&E to install its facilities in a new location. PG&E will not commence construction until all required land rights or pre-judgment possession orders therefore have been obtained. If VTA requests that PG&E commence the Relocation on the basis of a right of entry or prejudgment possession order in a condemnation action, VTA shall indemnify PG&E against any loss or damage that it may occur because VTA fails to obtain permanent rights for PG&E's facilities and transfer them to PG&E in a timely manner.
- 5.3.3** PG&E may elect to better its utility facilities by relocating its facilities in a manner or along a route which will be different from that required solely

to effect a Relocation necessary to accommodate the construction, reconstruction or improvement of VTA's SVBX Project or by increasing the capacity, durability or efficiency of PG&E's facilities. VTA shall not be obligated to pay any portion of any such Betterment.

- 5.3.4** PG&E shall submit the Relocation Plan to VTA. The plans shall be submitted in a 24" x 36" hard copy format with one electronic copy, a CD in a mutually acceptable format using the VTA horizontal and vertical datum.
- 5.3.5** VTA shall review the Relocation Plan and determine whether the Relocation as designed by PG&E will clear the conflict with VTA's Proposed Project. If not, VTA shall return the plans to PG&E with directions to modify the Relocation. PG&E shall modify the plan until VTA is satisfied that the plan will clear the conflict. When satisfied that the plan will clear the conflict, VTA shall approve the Relocation Plan in writing.
- 5.3.6** PG&E shall accumulate its costs for providing these advanced design services, and VTA shall pay its Proportionate Share of those costs regardless of whether VTA requests the Relocation.
- 5.3.7** VTA and PG&E project managers may meet monthly, during the advanced design period to coordinate design efforts. VTA reserves the right to suspend or terminate the Advanced Design and Cost Estimate for Relocation work, at anytime, provided that payment is made for work performed prior to suspension or termination. Within two (2) weeks of written notice from VTA, PG&E will cease design work and package the draft design completed to date for submittal to VTA.

5.4 Cost Estimate For Relocation

- 5.4.1** Upon request of VTA's Project Manager, PG&E shall prepare a Cost Estimate based on the Relocation Plan approved by VTA. The Cost Estimate shall specify the total estimated cost of each element. The estimated cost for each element shall separately state the following items, as those items are defined in 23 CFR 645 Subpart A:
 - 5.4.1.1** Labor (includes direct labor, labor surcharges, overhead and indirect construction charges, and equipment).
 - 5.4.1.2** Materials (includes materials and supplies, handling charges, transportation).
 - 5.4.1.3** Right-of-way (including labor costs associated with obtaining easements, permits and licenses).

- 5.4.1.4 Engineering (including preliminary engineering and construction engineering).
 - 5.4.1.5 Salvage credits, if any.
 - 5.4.1.6 Betterment credits, if any.
 - 5.4.1.7 Accrued depreciation credits, if any.
- 5.4.2 PG&E shall provide a list of the components included in overhead and indirect construction charges.
- 5.4.3 The Cost Estimate shall be developed in accordance with the Uniform System of Accounts as approved by the Federal Energy Regulatory Commission and shall include an Allowance for Funds Used During Construction (AFUDC) as required by that accounting system.
- 5.4.4 The Cost Estimate shall include Income Tax Component of Contributions (ITCC), where applicable, in accordance with PG&E's tariff rules.
- 5.4.5 PG&E shall transmit its Cost Estimate to VTA together with:
 - 5.4.5.1 A written statement of PG&E's opinion of VTA's Proportionate Share of the costs of each element of the Relocation, and
 - 5.4.5.2 At PG&E's election, PG&E may provide a written statement indicating whether PG&E is willing to perform the Relocation for a Fixed Cost equal to the Cost Estimate.
- 5.4.6 If VTA believes that there is an error in the Cost Estimate or any revised Cost Estimate due to changes, it shall so notify PG&E, and if PG&E concurs, PG&E shall make any adjustment necessary.
- 5.4.7 In the event that VTA does not agree with the Relocation Plan within ninety (90) days of the date that the Relocation Plan is submitted to VTA, PG&E may, at its option, revise the Cost Estimate for the Relocation Plan to account for any increases in labor or materials that will be incurred to perform the Relocation and VTA will be responsible to pay 100% of such Cost Estimate revision.
- 5.5 If PG&E has indicated that it is not willing to perform the Relocation on a Fixed Cost basis, PG&E will, at the request of VTA, meet and confer with VTA to determine if the scope of work for the Relocation can be redefined so as to eliminate the concerns that are causing PG&E to be unwilling to perform the work on a Fixed Cost basis. If PG&E, in its full discretion, elects to perform the Relocation on a Fixed Cost basis, it shall revise its Cost Estimate to reflect the redefined Relocation and indicate its willingness to perform the redefined Relocation on a Fixed Cost basis.

6. CONSTRUCTION.

- 6.1** If VTA determines that it desires PG&E to proceed with Relocation, it shall issue a Notice to Owner instructing the utility to proceed with the Relocation in accordance with the approved Relocation Plan. The Notice to Owner shall include:
- 6.1.1** If PG&E indicated its willingness to perform the Relocation for a Fixed Cost, the Notice to Owner shall include a statement as to whether VTA would prefer to pay the Fixed Cost or the Actual Cost for performance of the Relocation. Where the VTA prefers to pay the Fixed Cost and the VTA's Proportionate Share exceeds \$100,000, and if VTA is seeking reimbursement for any portion of its Proportionate Share from a federal agency, the Notice to Owner shall indicate that the VTA has obtained necessary authorization from the federal agency to have the Relocation performed on a Fixed Cost basis.
 - 6.1.2** A statement as to whether VTA agrees or disagrees with PG&E's opinion of VTA's Proportionate Share of the costs of the Relocation. If VTA does not agree with PG&E's opinion, the Notice to Owner shall set the budget authorization for the VTA Proportionate Share of the costs of the Relocation based upon PG&E's opinion furnished to VTA in accordance with Section 5.4 and shall state VTA's opinion of its Proportionate Share of those costs.
- 6.2** If VTA does not accept PG&E's opinion of VTA's Proportionate Share of the costs, VTA shall nonetheless pay the amount of invoices received pursuant to Section 9.1, and the dispute resolution procedures set forth in Section 12 shall be utilized to resolve the Proportionate Share dispute.
- 6.3** PG&E shall commence and diligently prosecute the Relocation to completion as nearly as possible in accordance with the Relocation Plan approved by VTA.
- 6.4** Permits
- 6.4.1** VTA will enter into any required "1602 Lake and Streambed Alteration Agreements" with the California Department of Fish and Game. PG&E will be responsible for implementing the permit conditions contained therein. PG&E should however, be given an opportunity to review and comment on the conditions prior to VTA entering the final agreement with the Department. PG&E may, at its option, enter into the required "1602 Lake and Streambed Alteration Agreements" with the California Department of Fish and Game.
 - 6.4.2** VTA will obtain the "National Pollutant Discharge Elimination System" ("NPDES") permit. PG&E or PG&E's contractor will prepare the Storm Water Pollution Prevention Plan ("SWPPP") and submit it to VTA for review and approval. VTA shall review the SWPPP and determine

whether it will meet the requirements of the NPDES. If not, VTA shall return the SWPPP to PG&E with directions to modify the design. PG&E shall modify the SWPPP design until VTA is reasonably satisfied that the SWPPP will meet the requirements of the NPDES. When reasonably satisfied that the SWPPP will meet the requirements of the NPDES, VTA shall approve the SWPPP in writing. Work will not be permitted until two (2) working days following VTA's approval of the SWPPP.

6.4.3 With the exception of the encroachment permits that shall be obtained in accordance with Section 6.4.4 below, VTA shall acquire, at no cost to PG&E and in a form satisfactory to PG&E, all necessary permits required for the temporary or permanent Relocation of PG&E's facilities from governmental agencies having jurisdiction over the same and shall file any statement required by, and otherwise comply with, the applicable provisions of the Environmental Quality Act of 1970 (California Public Resources Code, Sections 21000 et seq.). PG&E will not commence any construction until all required permits have been obtained.

6.4.4 PG&E shall secure all encroachment permits that may be required for the Relocation of PG&E Facilities to a new location in the Public Right of Way. Any costs incurred by PG&E for such encroachment permits shall be allocated between the parties pursuant to the Proportionate Share set forth in Section 2.

6.5 Upon discovery of Hazardous Material in connection with the Relocation, both VTA and PG&E shall immediately confer to explore all reasonable alternatives and agree on a course of action, and PG&E shall immediately reschedule the work to complete the Relocation in accordance with VTA's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

6.5.1 VTA will pay, in its entirety, those costs for additional necessary effort undertaken within the VTA Corridor to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such Hazardous Material has been introduced and released as a result of the existing installation or operation of the PG&E Facilities or by the construction activities of PG&E or PG&E contractors, in which case those costs will be paid by PG&E, to the extent such Hazardous Material was released by PG&E.

6.5.2 VTA will pay, in its entirety, those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the VTA Corridor to comply with existing statutes or regulations concerning the disposition of Hazardous Material unless such Hazardous Materials has been introduced and released as a result of the construction activities of PG&E or PG&E contractors, in which case that disposition will be made at no additional expense to VTA.

6.5.3 Each party to this Master Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.

6.6 VTA shall inspect and survey the relocated PG&E facilities to verify that they are installed to the correct vertical and horizontal alignment per the Relocation Plan. PG&E shall provide VTA with at least forty-eight (48) hours advance notice prior to PG&E placing backfill material over relocated PG&E facilities.

7. REVISIONS TO RELOCATION PLAN.

7.1 If at any time after VTA has issued a Notice to Owner for the Relocation, either party determines that it is necessary to deviate from the approved Relocation Plan the party making the determination shall notify the other party.

7.2 The parties shall agree upon the nature and scope of the deviation from the Relocation Plan.

7.3 VTA shall issue a Revised Notice to Owner describing the nature and scope of the deviation. To the extent design and/or construction work has occurred and is no longer needed due to the deviation, the Proportionate Share will be handled in accordance with Section 10.

7.4 PG&E shall not proceed with the deviation until it has received the Revised Notice to Owner.

7.5 Within 60 days of parties' reaching agreement on the nature and scope of the deviation, PG&E shall provide VTA with a design and an estimate of any increase or decrease in Actual Cost that it expects to result from the deviation. If it reasonably takes more than 60 days to provide the estimate, PG&E shall provide VTA with the length of time necessary to complete it. If VTA accepts this estimate, for purposes of this Section 7, the Cost Estimate shall be deemed increased or decreased by this amount. If VTA does not accept this estimate, VTA shall provide written notice to PG&E explaining its position. The dispute shall be resolved pursuant to Section 12.

8. BILLING.

8.1 PG&E may bill VTA for its Proportionate Share of work hereunder in installments, not more often than monthly and no less often than quarterly. All invoices shall be sent to:

Accounts Payable
Santa Clara Valley Transportation Authority
3331 North First Street, Bldg A
San Jose, CA 95134-1906

- 8.1.1** If PG&E is performing the Relocation on an Actual Cost basis, PG&E may only bill for VTA's Proportionate Share of the costs actually incurred to date. The installment invoice shall state the cost of labor and materials incurred by PG&E to a date specified, deduct therefrom any previous installments paid by VTA, and provide an estimate of the percentage of job completion as of the specified date.
- 8.1.2** If PG&E is performing the Relocation on a Fixed Cost basis, the installment invoice shall specify the percentage of job completion as of a specified date, the amount due, which shall be equal to VTA's Proportionate Share of the Fixed Cost multiplied by the percentage of job completion, and deduct therefrom any previous installments paid by VTA.
- 8.2** Not later than 120 days after PG&E has completed the Relocation, PG&E shall submit to VTA a final invoice for VTA's Proportionate Share of the Relocation.
- 8.2.1** If PG&E is performing the Relocation on an Actual Cost basis, the final invoice shall state the following:
- 8.2.1.1** The estimated cost as shown on the Cost Estimate for each element of the Relocation for which a separate element was estimated,
 - 8.2.1.2** The actual cost incurred for the element,
 - 8.2.1.3** VTA's Proportionate Share of the costs of each element, and
 - 8.2.1.4** The percentage by which the total costs for the elements deviate from the total Cost Estimate.

The invoice shall also state VTA's Proportionate Share for the Relocation and deduct there from any payments already received from VTA based on installment invoices. If the total of actual costs exceed the total of estimated costs by more than 15%, the invoice shall be accompanied by a written explanation for the deviation. If the Actual Cost exceeds the estimated cost solely as a result of a Revised Notice to Owner issued pursuant to Section 7.3, a copy of the revised Notice to Owner shall suffice as an explanation.

- 8.2.2** If PG&E is performing the Relocation on a Fixed Cost basis, the final invoice shall state VTA's Proportionate Share of the Fixed Cost of the Relocation plus VTA's Proportionate Share of any additional Actual Cost incurred as a result of any deviation from the Relocation Plan that is subject of a Revised Notice to Owner and deduct therefrom any payments already received from VTA based upon installment invoices. By allowing VTA to pay PG&E its Proportionate Share of the cost of Relocation on a Fixed Cost basis, the parties intend to eliminate any detailed audit of costs incurred by PG&E in performing the Relocation, unless directed to do so

by a federal, state or local funding agency as a condition of obtaining reimbursement for any portion of such cost. Upon request of the VTA, records necessary to satisfy VTA that PG&E has performed the Relocation consistent with the approved Relocation Plan shall be provided.

9. PAYMENT.

- 9.1 Not later than 60 days after receipt of an invoice, VTA shall pay to PG&E the amount of the invoice.
- 9.2 If the Relocation is being performed on an Actual Cost basis and the final invoice seeks an amount that will cause the total payments to exceed 115% of its Proportionate Share of the Cost Estimate, but that excess cost is due solely to a Revised Notice to owner, VTA shall pay the amount of the final invoice within 60 days of receipt of the final invoice.
- 9.3 If the Relocation is being performed on an Actual Cost basis and the final invoice seeks an amount that will cause the total payments made by VTA to exceed 115% of its Proportionate Share for the Estimated Cost and VTA is satisfied with the explanation provided by PG&E for the excess, VTA shall pay that amount within 60 days of receipt of the final invoice.
- 9.4 If the Relocation is being performed on an Actual Cost basis and the final invoice seeks an amount that will cause the total payments made by VTA to exceed 115% of its Proportionate Share of the Cost Estimate and VTA disputes the excess, VTA shall pay an amount within 60 days of receipt of the final invoice that will bring its total payment to 115% of its Proportionate Share of the Cost Estimate. The payment of any amount in excess shall be subject to the dispute resolution provision of Section 12.

10. WASTED WORK.

- 10.1 If VTA, for any reason, requests or causes PG&E to incur any expense, or to physically relocate its Facilities or portions thereof at a particular location, and then subsequently modifies the design or does not construct the SVBX Project at that location so that the work performed by PG&E is unnecessary or must be redone, such work shall be treated as Wasted Work and VTA shall be liable to PG&E for all costs, expenses, or damages caused thereby.
- 10.2 If PG&E incurs any expense or physically relocates its Facilities or portions thereof at a particular location, and then subsequently modifies the design or has to relocate its Facilities or portions thereof at that same location due to PG&E internal design preferences, then such work shall not be treated as Wasted Work and PG&E shall be liable for all costs and expenses of the subsequent design or relocation work. This Section 10.2 shall not apply to any modifications to the design made necessary to comply with applicable laws, regulations or permits by any governmental authority with jurisdiction.

11. **RETENTION OF RECORDS.** For a period of five years after completion of a Relocation, each party shall keep and maintain all books, papers, plans, drawings, records, accounting record, files, reports and other material relating to the Relocation and shall make these records available to the other party and any third party agency providing any part of the funding for VTA's project and their respective auditors at any reasonable time and upon reasonable notice of the purposes of auditing, inspection, and copying. All such auditing, inspection, and copying costs shall be at the sole cost of the Party requesting the records. PG&E shall include in any contract for any part of the Relocation a similar requirement and a provision requiring its contractor to require any subcontractor to do likewise.

12. **DISPUTE RESOLUTION.**

12.1 Either party may give the other party written notice of any dispute. If VTA disputes an invoice, VTA shall give PG&E notice of the dispute within 30 days of receipt of the invoice. If PG&E disputes VTA's opinion of its Proportionate Share, PG&E shall give VTA notice of the dispute within 30 days of receipt of VTA's opinion of its Proportionate Share. The notice shall state the basis of the dispute.

12.2 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Master Agreement or any subsequent Notice To Owner promptly by negotiations between a Vice President of PG&E or, if designated by a Vice President, an Operations Manager of PG&E, and an executive of similar authority of VTA. Within twenty (20) days after delivery of the notice specified in Section 12.1, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute.

12.3 If the matter has not been resolved within thirty (30) days of the first meeting, either party may initiate a mediation of the controversy. Neither party may initiate litigation until at least one mediation has been conducted.

12.4 All negotiations and any mediation conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, and Section 1152.5 is incorporated herein by reference.

12.5 Notwithstanding the foregoing provisions, a party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

12.6 Each party is required to continue to perform its obligations under this Master Agreement or any subsequent Notice To Owner pending final resolution of any dispute arising out of or relating to this Master Agreement or any subsequent Notice To Owner.

13. **SERVICE FACILITIES.** The Parties understand and agree that Relocation to be performed by PG&E under this Master Agreement is solely that of existing PG&E Facilities. Further, any construction or work on facilities, primarily serving any new location shall be provided in accordance with rules, regulations and service priorities of Public Utilities, subject to rates and charges as are from time to time adopted by PG&E, and in accordance with any applicable rules and regulations of the California Public Utilities Commission.

14. **RIGHTS RESERVED BY PARTIES.**

14.1 In the performance of this Master Agreement , VTA agrees that PG&E:

- 14.1.1 Is engaged in an independent business;
- 14.1.2 Is an independent contractor and is not an employee of VTA;
- 14.1.3 Shall have, and hereby retains, full control of its businesses;
- 14.1.4 Shall have, and hereby retains, full control of all the employment, compensation and discharge of all of its employees;
- 14.1.5 Shall be fully responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding tax and all other laws and regulations governing such matters; and
- 14.1.6 Shall be responsible for its own acts and those of its agents and employees

14.2 In the performance of this Master Agreement , PG&E agrees that VTA:

- 14.2.1 Is engaged in an independent business;
- 14.2.2 Is an independent contractor and not an employee of PG&E;
- 14.2.3 Shall have, and hereby retains, full control of its business;
- 14.2.4 Shall have, and hereby retains full control of all the employment compensation and discharge of all of its employees;
- 14.2.5 Shall be fully responsible for all matters relating to the payment of their employees, including compliance with Social Security, withholding tax and all other laws and regulations governing such matters; and
- 14.2.6 Shall be responsible for its own acts and those of its agents and employees

15. **FORCE MAJEURE AND ALLOCATION OF RESOURCES.**

15.1 No Party shall be liable for any delay or failure in performance of any part of this Master Agreement from any cause beyond its control or without its fault or

negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of carriers.

- 15.2** PG&E shall make a reasonable attempt to effect any Relocation in a timely and expeditious manner in accordance with good utility practice and consistent with reliability and safety. Each Relocation shall be placed in PG&E's regular schedule for engineering and construction. Nothing in this Master Agreement shall require PG&E to dedicate labor or materials to effect any Relocation in advance of the regular construction schedule. PG&E reserves the right to reallocate material or labor resources to the construction or maintenance projects which it deems, in good faith and in its sole discretion, necessary for serving the needs of all of its customers. PG&E shall reallocate such material or labor resources to again perform work under this Master Agreement, when, in its good faith opinion, the need to respond to such customer needs no longer exists. PG&E shall not be liable for any delay in effecting any Relocation hereunder resulting from such allocation or reallocation of PG&E's resources.
- 16. APPLICABLE LAWS.** In the performance of work under any subsequent Notice to Owner, PG&E and its contractors and subcontractors shall comply with all applicable laws and regulations.
- 17. NO PRECEDENT SET BY AGREEMENT.** The Parties agree not to use this Relocation Master Agreement to urge the establishment of any judicial precedent or legal principle or rule respecting liability for payment of expenses or costs to relocate Facilities owned by PG&E; however, the foregoing notwithstanding, said Master Agreement and its provisions may be disclosed to third parties, referred to by the Parties in future discussions and negotiations, if any, with one another and third parties.
- 18. NOTICES.**
- 18.1** All notices or other communications under this Master Agreement shall be deemed to have been duly given when made in writing and either (1) delivered in person, (2) delivered to an agent, such as an overnight delivery service or (3) deposited in the United States Mail, postage prepaid, and addressed as follows:
- | | |
|----------------------------------|---|
| Pacific Gas and Electric Company | Santa Clara Valley Transportation Authority |
| Land Agent | Scott Brady |
| 111 Almaden Boulevard | Manager, Utilities Coordination |
| San Jose, CA 95115 | 3331 North First Street, Building A |
| | San Jose, CA 95134-1927 |

- 18.2 The names and addresses to which notices or communications may be given may be changed by written notice give by any Party to the other Parties pursuant to this Section.
19. **CHOICE OF LAWS.** This Master Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Master Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.
20. **NON-WAIVER.** The waiver by either PG&E or VTA of any breach of any term, covenant, or condition contained in this Master Agreement, or any default in the performance of any obligations under this Master Agreement, shall not be deemed to be a waiver of any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of same.
21. **ENFORCEABILITY.** If any of the provisions or application of any of the provisions, of this Master Agreement are held to be illegal or invalid by a court of competent jurisdiction or arbitrator/mediator, PG&E and VTA shall negotiate an equitable adjustment in the provisions of this Master Agreement with a view toward effectuating the purpose of this Master Agreement. The illegality or invalidity of any of the provisions, or application of any of the provisions, of this Master Agreement will not affect the legality or enforceability of the remaining provisions or application of any of the provisions of the Master Agreement.
22. **TERM AND TERMINATION OF CONTRACT.**
- 22.1 This Master Agreement will be for a term of ten (10) years from the Effective Date (as provided in Section 26) unless terminated earlier.
- 22.2 Each Party shall notify the other of any item considered by such Party to be a material breach of this Agreement to allow the allegedly breaching party an opportunity to cure. If such material breach is not corrected or corrective action commenced within ten (10) business days of receipt of a notice to cure sent by the non-breaching Party, or within an extended period authorized in writing by the Party giving notice of the breach, and diligently pursued to completion, the non-breaching Party may, at its option, terminate this Agreement.
23. **INTEGRATION.** This Master Agreement and any subsequent Notice to Owner constitutes the entire agreement and understanding between the parties as to the Advance Design, Cost Estimates and Relocation work specified herein. This Master Agreement and any subsequent Notice to Owner supersede all prior or contemporaneous agreements, commitments, representations, writings, and discussions between VTA and PG&E, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Neither VTA nor PG&E shall be bound

by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Master Agreement and any subsequent Notice to Owner. This Master Agreement may not be amended except by a written agreement executed by both PG&E and VTA.

24. ASSIGNMENT.

24.1 Neither This Master Agreement nor any of the rights, interests or obligations hereunder shall be assigned or delegated, directly or indirectly, by a Party without the prior written consent of the other Party, and any attempt to assign or delegate without such consent shall be void; provided, that the other Party's consent shall not be required for (a) assignments to affiliates, where, in the absence of the other Party's consent thereto the assigning Party retains responsibility for the payment and performance of all of its obligations and liabilities hereunder; and (b) assignments by operation of law in connection with any merger or consolidation of a Party with or into a Person whether or not such Party is the surviving or resulting Person.

24.2 The provisions of this Master Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties.

25. SURVIVAL. The provisions of this Master Agreement which by their nature should survive expiration, cancellation or other termination of this Master Agreement, including but not limited to provisions regarding confidentiality (Section 12.4) and availability of information (Section 11), shall survive such expiration, cancellation or other termination.

26. EFFECTIVE DATE, SCOPE. PG&E will advise file a copy of this Agreement upon execution by PG&E and VTA with the Commission pursuant to General Order 96-B, Section 8.2.3. It shall become effective and binding upon PG&E's filing it with the Commission pursuant to General Order 96-B, Section 8.2.3 and PG&E shall provide a conformed copy of its filing to VTA.

27. AUTHORITY. Each Party represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Master Agreement, (b) the execution, delivery and performance of this Master Agreement by it has been duly authorized by all necessary corporate or other requisite actions, (c) it has duly and validly executed and delivered this Master Agreement, and (d) this Master Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and general principles of equity.

28. COUNTERPARTS. This Master Agreement may be executed in counterparts, each of which shall be deemed to be an original copy of this Master Agreement, but all of which, when taken together, shall be deemed to constitute one and the same agreement.

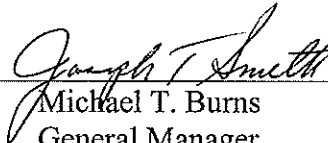
Executed:

Pacific Gas and Electric Company

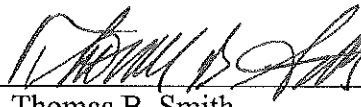
By:  9/20/2010
Date

**Des Bell
Sr. Vice President &
Chief Procurement Officer
Shared Services**

Santa Clara Valley Transportation Authority

By:  8/6/10
Michael T. Burns Date
General Manager

Approved:

By:  8/6/10
Thomas B. Smith Date
Purchasing & Materials Manager

Approved as to form:

By:  8/5/10
Counsel Date

Attachment 3:
Master Agreement Between Santa Clara
Valley Transportation Authority and PG&E
for Future Relocation of PG&E Facilities To
Accommodate the Santa Clara – Alum Rock
Rapid Transit (SC-AR) and Capitol
Expressway Improvement Projects

**Master Agreement Between
Santa Clara Valley Transportation Authority and
PG&E for Future Relocation of PG&E Facilities
To Accommodate the Santa Clara - Alum Rock Rapid Transit (SC-AR) and
Capitol Expressway Improvements Projects**

This Master Relocation Agreement ("Master Agreement") is entered into between the Santa Clara Valley Transportation Authority ("VTA"), 3331 North First Street, Building A, San Jose, California 95134-1927 and Pacific Gas and Electric Company ("PG&E"), whose mailing address is PG&E, 111 Almaden Boulevard, San Jose, CA 95115, collectively referred to as the "Parties," with reference to the following facts:

RECITALS.

- A. WHEREAS, VTA is a public entity organized and existing in the County of Santa Clara pursuant to Public Utilities Code sections 100000 et seq.;
- B. WHEREAS, PG&E is a public utility as defined in Public Utilities Code section 216 and is organized, existing and doing business in the State of California;
- C. WHEREAS, PG&E provides natural gas and electric service to the public;
- D. WHEREAS, in and on Public Rights of Way within the respective cities herein described, PG&E owns and operates:
 - 1. Certain electric facilities installed and operated pursuant to City of San Jose ordinance No. 15880 (September 20, 1971), and No. 21677 (May 18, 1984) and County of Santa Clara ordinance No. 638 (September 19, 1952);
 - 2. Certain natural gas facilities installed and operated pursuant to City of San Jose ordinance No. 15879 (September 20, 1971), and No. 21676 (May 18, 1984) and County of Santa Clara ordinance No. 4.29 (January 13, 1984);
 - 3. Certain electric and natural gas facilities in the City of San Jose pursuant to Section 19 of Article IX of the Constitution of the State of California as said section existed prior to its amendment on October 10, 1911;
 - 4. Certain electric and gas facilities installed and operated pursuant to easements with rights prior to Public Rights of Way within the respective cities and counties.
- E. WHEREAS, VTA is planning future improvements primarily along Santa Clara Street, Alum Rock Avenue, and Capitol Avenue; in and on Public Rights of Way within the City of San Jose and on adjacent private properties; known as the Santa Clara-Alum Rock (SC-AR) Rapid Transit Project;

- F.** WHEREAS, VTA is planning future improvements through the phased construction of a light rail project which includes VTA's Eastridge Transit Center and road improvements along Capitol Expressway in and on Public Rights of Way within the County of Santa Clara, the City of San Jose and on adjacent private properties, known as the Capitol Expressway Light Rail Pedestrian Improvements Project (Contract C810) and the Capitol Expressway Light Rail Eastridge Transit Center and Bus Improvements Project (Contract C811), excluding rail extension work associated with VTA's project known as Capitol Expressway Light Rail (CELR);
- G.** WHEREAS, under this agreement the SC-AR Rapid Transit Project and the Capitol Expressway Light Rail Project improvement phases as described above in Recital Paragraphs E and F will be known collectively as the Santa Clara Alum Rock and Capitol Expressway Improvements Project (PROJECT);
- H.** WHEREAS, some of the "PG&E facilities" are located within the PROJECT Area and may be required to be rearranged or relocated to accommodate the PROJECT;
- I.** WHEREAS, the responsibilities for the cost and expense of relocation of PG&E facilities may vary depending upon the terms and conditions of the property rights covering the PG&E facilities at each of the several locations where impacts from the PROJECT may require relocation;
- J.** WHEREAS, PG&E is willing to accommodate the PROJECT under the terms and conditions specified in this Master Agreement and under the terms and conditions of any existing easements, permits, licenses or franchise rights granted to PG&E that cover the PG&E facilities that are being impacted by the PROJECT.

NOW, THEREFORE, for valuable consideration, VTA and PG&E agree as follows:

1. DEFINITIONS.

The following terms are herein defined:

- 1.1** "Actual Cost" means actual and reasonable costs, as determined under the Uniform System of Accounts approved by the Federal Energy Regulatory Commission, incurred by PG&E in performing the Relocation specified in the Notice to Owner.
- 1.2** "Betterment" means that future Relocation costs shall not include those charges for "betterment," which, for purpose of this Master Agreement, shall be defined as provided for in 18 Code of Federal Regulations (4-7-93 Edition), Part 101-Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, Electric Plant Instructions, paragraph 10 C (3): *"The primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity"*. "Betterment" shall not include technological improvements (such as the use of fiber optic cable) which are able to achieve greater usefulness, efficiency, durability or capacity at costs equal to or less than the costs of a "like-for-like"

replacement or relocation. Betterment does not include differences caused by changes in manufacturing standards, availability of materials, or regulatory requirements. VTA shall not be obligated to pay for any portion of any Betterment.

- 1.3 "Cost Estimate" means a detailed estimate of the costs of a Relocation prepared pursuant to Section 5.4.
- 1.4 "Delineate" means to indicate the approximate horizontal and vertical location of a facility. PG&E may provide its drawings to VTA in satisfaction of a request to Delineate the PG&E Facilities.
- 1.5 "Fixed Cost" means a fixed sum equal to the Cost Estimate for performing the Relocation specified in the Notice to Owner.
- 1.6 "Hazardous Material(s)" means any hazardous substance, hazardous material or hazardous waste as defined under state or federal law.
- 1.7 "Notice to Owner" means the written notice given pursuant to Section 4.1 instructing PG&E to proceed with the Relocation and designating the Relocation Plan to be used.
- 1.8 "Master Agreement" means this document which contains the terms and conditions which apply to all Relocations of PG&E facilities that may be required to be rearranged to accommodate the PROJECT.
- 1.9 "PG&E Facilities" means electric and gas utility facilities installed, operated and maintained to provide essential service to the public.
- 1.10 "PG&E's Project Manager" means the person designated by PG&E to perform the functions of PG&E's Project Manager specified in this Master Agreement.
- 1.11 "Proportionate Share", for purposes of Design or Construction, means the share of all reasonable, appropriate and actual or fixed costs of Relocation to be borne by a party in accordance with Sections 2.1 and 2.2.
- 1.12 "PROJECT" means the street improvements to accommodate the Santa Clara Alum Rock and Capitol Expressway Improvements described in Recital Paragraphs E and F to be constructed in the City of San Jose and County of Santa Clara in and along Santa Clara Street, Alum Rock Avenue, Capitol Avenue and Capitol Expressway.
- 1.13 "Public Rights of Way" means the public highways, streets, roads, ways, alleys and other places in which the public has a right of passage.
- 1.14 "Public Utility Easement" means an area of land designated in a deed from a private party or on a parcel map or subdivision map as a public utility easement, public service easement, and other public easements dedicated under Government

Code Section 66475, whether or not accepted by a local agency. A Public Utility Easement is not a Public Right of Way.

- 1.15 "Relocation" means permanently or temporarily moving, lowering, or raising PG&E facilities or otherwise clearing a conflict between the PG&E facilities and the PROJECT improvements.
- 1.16 "Relocation Plan" means detailed plans, schedule and specifications for specific Relocations prepared by PG&E based on plans for VTA's PROJECT provided by VTA. A Relocation Plan contains sufficient detail to allow preparation of an accurate estimate of costs for the Relocation.
- 1.17 "Revised Notice to Owner" means a written notice given to PG&E approving a deviation from the approved Relocation Plan.
- 1.18 "PROJECT Area" means the geographic area affected by the Relocation as delineated pursuant to Section 5.1.1.
- 1.19 "VTA Property" means land VTA owns.
- 1.20 "VTA's Project Manager" means the person designated by VTA to perform the functions of the VTA's Project Manager specified in this Master Agreement.

2. PROPORTIONATE SHARE.

- 2.1 All costs for Relocation of PG&E Facilities that are located within and on Public Rights of Way, pursuant to the franchises, rights and privileges described in Paragraph D, subparagraphs 1, 2 and 3 of the Recitals hereof are to be paid for by VTA and PG&E in equal shares.
- 2.2 Notwithstanding Section 2.1, the Proportionate Share of all costs for Relocation of PG&E Facilities that are currently located under an easement, license or permit, and not pursuant to the franchises, rights and privileges described in Paragraph D, subparagraphs 1, 2 and 3 of the Recitals hereof, shall be determined under the terms of such easement, license or permit. If VTA is the grantor or successor-in-interest to the grantor of any such easement, license or permit, and the terms of such instrument expressly provide for relocation at PG&E's expense, PG&E's Proportionate Share of cost shall be 100%. For locations of PG&E Facilities under an easement, license or permit, in which VTA is not the grantor or successor-in-interest to the grantor, VTA's Proportionate Share of cost shall be 100%. For Relocation of those PG&E Facilities which are located in areas pursuant to Public Utility Easements and non-perfected claims of prescription on the property of third parties, VTA's Proportionate Share is 100% of such costs.

3. PROJECT MANAGER AUTHORITY.

- 3.1 VTA shall designate a person to act as VTA's Project Manager. VTA represents that such person has the authority to bind VTA with respect to the functions to be

carried out by VTA's Project Manager under this Master Agreement and any subsequent Notice to Owner or Revised Notice to Owner.

- 3.2** PG&E shall designate a person to coordinate with PG&E's Project Manager. PG&E represents that such person will serve as the point of contact to obtain the necessary approvals and authority to bind PG&E with respect to the functions to be carried out by PG&E's Project Manager under this Master Agreement and any subsequent Notice to Owner or Revised Notice to Owner.

4. NOTICE TO OWNER.

- 4.1** A Notice to Owner will be prepared to define specific utility relocation scopes of work throughout the PROJECT. These Notices to Owner will call for the utility owner to perform the construction functions required to complete the Relocation in the order specified in Section 6 herein.
- 4.2** All other aspects of the work covered by each Notice shall be in accordance with the terms and conditions of this Master Agreement.

5. PLANNING AND DESIGN.

5.1 Initial Assessment

- 5.1.1** VTA shall provide PG&E with preliminary drawings depicting the PROJECT Area.
- 5.1.2** PG&E shall furnish utility drawings that Delineate those facilities of PG&E that are located within the PROJECT Area. Upon request, PG&E shall provide to VTA an estimate of the time and cost it will require to perform this service.
- 5.1.3** PG&E shall accumulate its costs to Delineate its facilities pursuant to Section 5.1.2, and VTA shall pay its Proportionate Share of those costs regardless of whether VTA requests any Relocation.
- 5.1.4** VTA shall thereafter prepare final drawings that Delineate all surface and subsurface structures, including those of PG&E, located within the PROJECT Area and superimposing VTA's PROJECT.

5.2 Preliminary Design

- 5.2.1** If the drawings prepared pursuant to Section 5.1.4 indicate a potential conflict with any of PG&E's facilities, VTA shall positively locate the horizontal and vertical location of the potentially conflicting facilities in order to identify physical conflicts. PG&E shall cooperate with VTA in developing this information.
- 5.2.2** VTA's Project Manager and PG&E's Project Manager shall consult as necessary to decide whether identified physical conflicts can best be eliminated by PG&E's rearranging the conflicting facility or VTA's adjusting its preliminary plans or a combination of both.
- 5.2.3** PG&E shall accumulate its costs for providing these preliminary design services, and VTA shall pay for its Proportionate Share of those costs regardless of whether VTA requests any Relocation.

5.3 Advanced Design

- 5.3.1** Upon the request of VTA's Project Manager, PG&E shall prepare a Relocation Plan. The plan shall divide the rearrangement into manageable elements and for each element shall include the location, length, size and/or capacity, type, class, and pertinent operating conditions and design features of existing facilities and proposed final and temporary facilities, including any proposed changes to them; and the limits of right-of-way to be acquired from, by, or on behalf of PG&E. Upon request, PG&E shall provide to VTA an estimate of the time it will require to perform this service.
- 5.3.2** In any Relocation PG&E shall be entitled to equivalent facilities, including equivalent land rights for land rights surrendered (e.g., if facilities are being relocated from a private easement, a new private easement for the replacement facilities must be provided). If the approved Relocation Plan contemplates that additional land rights be acquired, VTA shall convey or cause to be conveyed to PG&E all necessary land rights in a form satisfactory to PG&E to permit PG&E to install its facilities in a new location. PG&E will not commence construction until all required land rights or pre-judgment possession orders therefore have been obtained. If VTA requests that PG&E commence the Relocation on the basis of a right of entry or prejudgment possession order in a condemnation action, VTA shall indemnify PG&E against any loss or damage that it may occur because VTA fails to obtain permanent rights for PG&E's facilities and transfer them to PG&E in a timely manner.
- 5.3.3** PG&E may elect to better its utility facilities by relocating its facilities in a manner or along a route which will be different from that required solely to effect a Relocation necessary to accommodate the construction, reconstruction or improvement of VTA's PROJECT or by increasing the

capacity, durability or efficiency of PG&E's facilities. VTA shall not be obligated to pay any portion of any such Betterment.

5.3.4 PG&E shall submit the Relocation Plan to VTA. The plans shall be submitted in a 24" x 36" hard copy format with one electronic copy, and a CD in a mutually acceptable format using horizontal and vertical datum provided by VTA.

5.3.5 VTA shall review the Relocation Plan and determine whether the Relocation as designed by PG&E will clear the conflict with VTA's PROJECT. If not, VTA shall return the plans to PG&E with directions to modify the Relocation. PG&E shall modify the plan until VTA is satisfied that the plan will clear the conflict. When satisfied that the plan will clear the conflict, VTA shall approve the Relocation Plan in writing.

5.3.6 PG&E shall accumulate its costs for providing these advanced design services, and VTA shall pay its Proportionate Share of those costs regardless of whether VTA requests the Relocation.

5.3.7 VTA and PG&E project managers may meet monthly, during the advanced design period to coordinate design efforts. VTA reserves the right to suspend or terminate the Advanced Design and Cost Estimate for Relocation work, at anytime, provided that payment is made for work performed prior to suspension or termination. Within two (2) weeks of written notice from VTA, PG&E will cease design work and package the draft design completed to date for submittal to VTA.

5.4 Cost Estimate For Relocation

5.4.1 Upon request of VTA's Project Manager, PG&E shall prepare a Cost Estimate based on the Relocation Plan approved by VTA. The Cost Estimate shall specify the total estimated cost of each element. The estimated cost for each element shall separately state the following items, as those items are defined in 23 CFR 645 Subpart A:

5.4.1.1 Labor (includes direct labor, labor surcharges, overhead and indirect construction charges, and equipment).

5.4.1.2 Materials (includes materials and supplies, handling charges, transportation).

5.4.1.3 Right-of-way (including labor costs associated with obtaining easements, permits and licenses).

5.4.1.4 Engineering (including preliminary engineering and construction engineering).

5.4.1.5 Salvage credits, if any.

- 5.4.1.6 Betterment credits, if any.
 - 5.4.1.7 Accrued depreciation credits, if any.
 - 5.4.2 PG&E shall provide a list of the components included in overhead and indirect construction charges.
 - 5.4.3 The Cost Estimate shall be developed in accordance with the Uniform System of Accounts as approved by the Federal Energy Regulatory Commission and shall include an Allowance for Funds Used During Construction (AFUDC) as required by that accounting system.
 - 5.4.4 The Cost Estimate shall include Income Tax Component of Contributions (ITCC), where applicable, in accordance with PG&E's tariff rules.
 - 5.4.5 PG&E shall transmit its Cost Estimate to VTA together with:
 - 5.4.5.1 A written statement of PG&E's opinion of VTA's Proportionate Share of the costs of each element of the Relocation, and
 - 5.4.5.2 At PG&E's election, PG&E may provide a written statement indicating whether PG&E is willing to perform the Relocation for a Fixed Cost equal to the Cost Estimate.
 - 5.4.6 If VTA believes that there is an error in the Cost Estimate or any revised Cost Estimate due to changes, it shall so notify PG&E, and if PG&E concurs, PG&E shall make any adjustment necessary.
 - 5.4.7 In the event that VTA does not agree with the Relocation Plan within ninety (90) days of the date that the Relocation Plan is submitted to VTA, PG&E may, at its option, revise the Cost Estimate for the Relocation Plan to account for any increases in labor or materials that will be incurred to perform the Relocation and VTA will be responsible to pay 100% of such Cost Estimate revision.
 - 5.5 If PG&E has indicated that it is not willing to perform the Relocation on a Fixed Cost basis, PG&E will, at the request of VTA, meet and confer with VTA to determine if the scope of work for the Relocation can be redefined so as to eliminate the concerns that are causing PG&E to be unwilling to perform the work on a Fixed Cost basis. If PG&E, in its full discretion, elects to perform the Relocation on a Fixed Cost basis, it shall revise its Cost Estimate to reflect the redefined Relocation and indicate its willingness to perform the redefined Relocation on a Fixed Cost basis.
 - 5.6 If PG&E provided initial, preliminary or advanced design services for the PROJECT as provided in Sections 5.1, 5.2 and 5.3 prior to the effective date of this Agreement, PG&E shall accumulate its costs as provided in those sections and bill for those services as provided in Section 8.

6. CONSTRUCTION.

- 6.1** If VTA determines that it desires PG&E to proceed with Relocation, it shall issue a Notice to Owner instructing the utility to proceed with the Relocation in accordance with the approved Relocation Plan. The Notice to Owner shall include:
 - 6.1.1** If PG&E indicated its willingness to perform the Relocation for a Fixed Cost, the Notice to Owner shall include a statement as to whether VTA would prefer to pay the Fixed Cost or the Actual Cost for performance of the Relocation. Where the VTA prefers to pay the Fixed Cost and the VTA's Proportionate Share exceeds \$100,000, and if VTA is seeking reimbursement for any portion of its Proportionate Share from a federal agency, the Notice to Owner shall indicate that the VTA has obtained necessary authorization from the federal agency to have the Relocation performed on a Fixed Cost basis.
 - 6.1.2** A statement as to whether VTA agrees or disagrees with PG&E's opinion of VTA's Proportionate Share of the costs of the Relocation. If VTA does not agree with PG&E's opinion, the Notice to Owner shall set the budget authorization for the VTA Proportionate Share of the costs of the Relocation based upon PG&E's opinion furnished to VTA in accordance with Section 5.4 and shall state VTA's opinion of its Proportionate Share of those costs.
- 6.2** If VTA does not accept PG&E's opinion of VTA's Proportionate Share of the costs, VTA shall nonetheless pay the amount of invoices received pursuant to Section 9.1, and the dispute resolution procedures set forth in Section 12 shall be utilized to resolve the Proportionate Share dispute.
- 6.3** PG&E shall commence and diligently prosecute the Relocation to completion as nearly as possible in accordance with the Relocation Plan approved by VTA.
- 6.4** Permits
 - 6.4.1** VTA will enter into any required "1602 Lake and Streambed Alteration Agreements" with the California Department of Fish and Game. PG&E will be responsible for implementing the permit conditions contained therein. PG&E should however, be given an opportunity to review and comment on the conditions prior to VTA entering the final agreement with the Department. PG&E may, at its option, enter into the required "1602 Lake and Streambed Alteration Agreements" with the California Department of Fish and Game.
 - 6.4.2** VTA will obtain any required "National Pollutant Discharge Elimination System" ("NPDES") permit. PG&E or PG&E's contractor will prepare

the Storm Water Pollution Prevention Plan ("SWPPP") and submit it to VTA for review and approval. VTA shall review the SWPPP and determine whether it will meet the requirements of the NPDES. If not, VTA shall return the SWPPP to PG&E with directions to modify the design. PG&E shall modify the SWPPP design until VTA is reasonably satisfied that the SWPPP will meet the requirements of the NPDES. When reasonably satisfied that the SWPPP will meet the requirements of the NPDES, VTA shall approve the SWPPP in writing. Work will not be permitted until two (2) working days following VTA's approval of the SWPPP.

6.4.3 With the exception of the encroachment permits that shall be obtained in accordance with Section 6.4.4 below, VTA shall acquire, at no cost to PG&E and in a form satisfactory to PG&E, all necessary permits required for the temporary or permanent Relocation of PG&E's facilities from governmental agencies having jurisdiction over the same and shall file any statement required by, and otherwise comply with, the applicable provisions of the Environmental Quality Act of 1970 (California Public Resources Code, Sections 21000 et seq.). PG&E will not commence any construction until all required permits have been obtained.

6.4.4 PG&E shall secure all encroachment permits that may be required for the Relocation of PG&E Facilities to a new location in the Public Right of Way. Any costs incurred by PG&E for such encroachment permits shall be allocated between the parties pursuant to the Proportionate Share set forth in Section 2.

6.5 Upon discovery of Hazardous Material in connection with the Relocation, both VTA and PG&E shall immediately confer to explore all reasonable alternatives and agree on a course of action, and PG&E shall immediately reschedule the work to complete the Relocation in accordance with VTA's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.

6.5.1 VTA will pay, in its entirety, those costs for additional necessary effort undertaken within VTA Property to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such Hazardous Material has been introduced and released as a result of the existing installation or operation of the PG&E Facilities or by the construction activities of PG&E or PG&E contractors, in which case those costs will be paid by PG&E, to the extent such Hazardous Material was released by PG&E.

6.5.2 VTA will pay, in its entirety, those costs for additional necessary efforts undertaken within the area of the replacement property right located outside VTA Property to comply with existing statutes or regulations concerning the disposition of Hazardous Material unless such Hazardous

Materials has been introduced and released as a result of the construction activities of PG&E or PG&E contractors, in which case that disposition will be made at no additional expense to VTA.

6.5.3 Each party to this Master Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.

6.6 VTA, at its option, shall inspect and survey the relocated PG&E facilities to verify that they are installed to the correct vertical and horizontal alignment per the Relocation Plan. PG&E shall provide VTA with at least forty-eight (48) hours advance notice prior to PG&E placing backfill material over relocated PG&E facilities.

7. REVISIONS TO RELOCATION PLAN.

7.1 If at any time after VTA has issued a Notice to Owner for the Relocation either party determines that it is necessary to deviate from the approved Relocation Plan, the party making the determination shall notify the other party.

7.2 The parties shall agree upon the nature and scope of the deviation from the Relocation Plan.

7.3 VTA shall issue a Revised Notice to Owner describing the nature and scope of the deviation. To the extent design and/or construction work has occurred and is no longer needed due to the deviation, the Proportionate Share will be handled in accordance with Section 10.

7.4 PG&E shall not proceed with the deviation until it has received the Revised Notice to Owner.

7.5 Within 60 days of parties' reaching agreement on the nature and scope of the deviation, PG&E shall provide VTA with a design and an estimate of any increase or decrease in Actual Cost that it expects to result from the deviation. If it reasonably takes more than 60 days to provide the estimate, PG&E shall provide VTA with the length of time necessary to complete it. If VTA accepts this estimate, for purposes of this Section 7, the Cost Estimate shall be deemed increased or decreased by this amount. If VTA does not accept this estimate, VTA shall provide written notice to PG&E explaining its position. The dispute shall be resolved pursuant to Section 12.

8. BILLING.

8.1 PG&E may bill VTA for its Proportionate Share of work hereunder in installments, not more often than monthly and no less often than quarterly. All invoices shall be sent to:

Accounts Payable

Santa Clara Valley Transportation Authority
3331 North First Street, Bldg A
San Jose, CA 95134-1906

- 8.1.1** If PG&E is performing the Relocation on an Actual Cost basis, PG&E may only bill for VTA's Proportionate Share of the costs actually incurred to date. The installment invoice shall state the cost of labor and materials incurred by PG&E to a date specified, deduct therefrom any previous installments paid by VTA, and provide an estimate of the percentage of job completion as of the specified date.
 - 8.1.2** If PG&E is performing the Relocation on a Fixed Cost basis, the installment invoice shall specify the percentage of job completion as of a specified date, the amount due, which shall be equal to VTA's Proportionate Share of the Fixed Cost multiplied by the percentage of job completion, and deduct therefrom any previous installments paid by VTA.
- 8.2** Not later than 120 days after PG&E has completed the Relocation, PG&E shall submit to VTA a final invoice for VTA's Proportionate Share of the Relocation.
 - 8.2.1** If PG&E is performing the Relocation on an Actual Cost basis, the final invoice shall state the following:
 - 8.2.1.1** The estimated cost as shown on the Cost Estimate for each element of the Relocation for which a separate element was estimated,
 - 8.2.1.2** The actual cost incurred for the element,
 - 8.2.1.3** VTA's Proportionate Share of the costs of each element, and
 - 8.2.1.4** The percentage by which the total costs for the elements deviate from the total Cost Estimate.

The invoice shall also state VTA's Proportionate Share for the Relocation and deduct therefrom any payments already received from VTA based on installment invoices. If the total of actual costs exceeds the total of estimated costs by more than 15%, the invoice shall be accompanied by a written explanation for the deviation. If the Actual Cost exceeds the estimated cost solely as a result of a Revised Notice to Owner issued pursuant to Section 7.3, a copy of the revised Notice to Owner shall suffice as an explanation.

- 8.2.2** If PG&E is performing the Relocation on a Fixed Cost basis, the final invoice shall state VTA's Proportionate Share of the Fixed Cost of the Relocation plus VTA's Proportionate Share of any additional Actual Cost incurred as a result of any deviation from the Relocation Plan that is subject of a Revised Notice to Owner and deduct therefrom any payments

already received from VTA based upon installment invoices. By allowing VTA to pay PG&E its Proportionate Share of the cost of Relocation on a Fixed Cost basis, the parties intend to eliminate any detailed audit of costs incurred by PG&E in performing the Relocation, unless directed to do so by a federal, state or local funding agency as a condition of obtaining reimbursement for any portion of such cost. Upon request of the VTA, records necessary to satisfy VTA that PG&E has performed the Relocation consistent with the approved Relocation Plan shall be provided.

9. PAYMENT.

- 9.1** Not later than 60 days after receipt of an invoice, VTA shall pay to PG&E the amount of the invoice.
- 9.2** If the Relocation is being performed on an Actual Cost basis and the final invoice seeks an amount that will cause the total payments to exceed 115% of its Proportionate Share of the Cost Estimate, but that excess cost is due solely to a Revised Notice to owner, VTA shall pay the amount of the final invoice within 60 days of receipt of the final invoice.
- 9.3** If the Relocation is being performed on an Actual Cost basis and the final invoice seeks an amount that will cause the total payments made by VTA to exceed 115% of its Proportionate Share of the Cost Estimate and VTA is satisfied with the explanation provided by PG&E for the excess, VTA shall pay that amount within 60 days of receipt of the final invoice.
- 9.4** If the Relocation is being performed on an Actual Cost basis and the final invoice seeks an amount that will cause the total payments made by VTA to exceed 115% of its Proportionate Share of the Cost Estimate and VTA disputes the excess, VTA shall pay an amount within 60 days of receipt of the final invoice that will bring its total payment to 115% of its Proportionate Share of the Cost Estimate. The payment of any amount in excess shall be subject to the dispute resolution provision of Section 12.

10. WASTED WORK.

- 10.1** If VTA, for any reason, requests or causes PG&E to incur any expense, or to physically relocate its Facilities or portions thereof at a particular location, and then subsequently modifies the design or does not construct the PROJECT at that location so that the work performed by PG&E is unnecessary or must be redone, such work shall be treated as Wasted Work and VTA shall be liable to PG&E for all costs, expenses, or damages caused thereby.
- 10.2** If PG&E incurs any expense or physically relocates its Facilities or portions thereof at a particular location, and then subsequently modifies the design or has to relocate its Facilities or portions thereof at that same location due to PG&E internal design preferences, then such work shall not be treated as Wasted Work and PG&E shall be liable for all costs and expenses of the subsequent design or

relocation work. This Section 10.2 shall not apply to any modifications to the design made necessary to comply with applicable laws, regulations or permits by any governmental authority with jurisdiction.

- 11. RETENTION OF RECORDS.** For a period of five years after completion of a Relocation, each party shall keep and maintain all books, papers, plans, drawings, records, accounting record, files, reports and other material relating to the Relocation and shall make these records available to the other party and any third party agency providing any part of the funding for VTA's project and their respective auditors at any reasonable time and upon reasonable notice of the purposes of auditing, inspection, and copying. All such auditing, inspection, and copying costs shall be at the sole cost of the Party requesting the records. PG&E shall include in any contract for any part of the Relocation a similar requirement and a provision requiring its contractor to require any subcontractor to do likewise.

12. DISPUTE RESOLUTION.

- 12.1** Either party may give the other party written notice of any dispute. If VTA disputes an invoice, VTA shall give PG&E notice of the dispute within 30 days of receipt of the invoice. If PG&E disputes VTA's opinion of its Proportionate Share, PG&E shall give VTA notice of the dispute within 30 days of receipt of VTA's opinion of its Proportionate Share. The notice shall state the basis of the dispute.
- 12.2** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Master Agreement or any subsequent Notice To Owner promptly by negotiations between a Vice President of PG&E or, if designated by a Vice President, an Operations Manager of PG&E, and an executive of similar authority of VTA. Within twenty (20) days after delivery of the notice specified in Section 12.1, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute.
- 12.3** If the matter has not been resolved within thirty (30) days of the first meeting, either party may initiate a mediation of the controversy. Neither party may initiate litigation until at least one mediation has been conducted.
- 12.4** All negotiations and any mediation conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, and Section 1152.5 is incorporated herein by reference.
- 12.5** Notwithstanding the foregoing provisions, a party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.
- 12.6** Each party is required to continue to perform its obligations under this Master Agreement or any subsequent Notice To Owner pending final resolution of any

dispute arising out of or relating to this Master Agreement or any subsequent Notice To Owner.

- 13. SERVICE FACILITIES.** The Parties understand and agree that Relocation to be performed by PG&E under this Master Agreement is solely that of existing PG&E Facilities. Further, any construction or work on facilities, primarily serving any new location shall be provided in accordance with rules, regulations and service priorities of Public Utilities, subject to rates and charges as are from time to time adopted by PG&E, and in accordance with any applicable rules and regulations of the California Public Utilities Commission.

14. RIGHTS RESERVED BY PARTIES.

14.1 In the performance of this Master Agreement , VTA agrees that PG&E:

- 14.1.1** Is engaged in an independent business;
- 14.1.2** Is an independent contractor and is not an employee of VTA;
- 14.1.3** Shall have, and hereby retains, full control of its businesses;
- 14.1.4** Shall have, and hereby retains, full control of all the employment, compensation and discharge of all of its employees;
- 14.1.5** Shall be fully responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding tax and all other laws and regulations governing such matters; and
- 14.1.6** Shall be responsible for its own acts and those of its agents and employees

14.2 In the performance of this Master Agreement , PG&E agrees that VTA:

- 14.2.1** Is engaged in an independent business;
- 14.2.2** Is an independent contractor and not an employee of PG&E;
- 14.2.3** Shall have, and hereby retains, full control of its business;
- 14.2.4** Shall have, and hereby retains full control of all the employment compensation and discharge of all of its employees;
- 14.2.5** Shall be fully responsible for all matters relating to the payment of their employees, including compliance with Social Security, withholding tax and all other laws and regulations governing such matters; and
- 14.2.6** Shall be responsible for its own acts and those of its agents and employees

15. FORCE MAJEURE AND ALLOCATION OF RESOURCES.

- 15.1** No Party shall be liable for any delay or failure in performance of any part of this Master Agreement from any cause beyond its control or without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of carriers.
- 15.2** PG&E shall make a reasonable attempt to effect any Relocation in a timely and expeditious manner in accordance with good utility practice and consistent with reliability and safety. Each Relocation shall be placed in PG&E's regular schedule for engineering and construction. Nothing in this Master Agreement shall require PG&E to dedicate labor or materials to effect any Relocation in advance of the regular construction schedule. PG&E reserves the right to reallocate material or labor resources to the construction or maintenance projects which it deems, in good faith and in its sole discretion, necessary for serving the needs of all of its customers. PG&E shall reallocate such material or labor resources to again perform work under this Master Agreement, when, in its good faith opinion, the need to respond to such customer needs no longer exists. PG&E shall not be liable for any delay in effecting any Relocation hereunder resulting from such allocation or reallocation of PG&E's resources.
- 16. APPLICABLE LAWS.** In the performance of work under any subsequent Notice to Owner, PG&E and its contractors and subcontractors shall comply with all applicable laws and regulations.
- 17. NO PRECEDENT SET BY AGREEMENT.** The Parties agree not to use this Relocation Master Agreement to urge the establishment of any judicial precedent or legal principle or rule respecting liability for payment of expenses or costs to relocate Facilities owned by PG&E; however, the foregoing notwithstanding, said Master Agreement and its provisions may be disclosed to third parties and referred to by the Parties in future discussions and negotiations, if any, with one another and third parties.
- 18. NOTICES.**
- 18.1** All notices or other communications under this Master Agreement shall be deemed to have been duly given when made in writing and either (1) delivered in person, (2) delivered to an agent, such as an overnight delivery service or (3) deposited in the United States Mail, postage prepaid, and addressed as follows:
- | | |
|----------------------------------|---|
| Pacific Gas and Electric Company | Santa Clara Valley Transportation Authority |
| Land Agent | Scott Brady |
| 111 Almaden Boulevard | Manager, Utilities Coordination |
| San Jose, CA 95115 | 3331 North First Street, Building A |
| | San Jose, CA 95134-1927 |

18.2 The names and addresses to which notices or communications may be given may be changed by written notice give by any Party to the other Parties pursuant to this Section.

- 19. CHOICE OF LAWS.** This Master Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Master Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.
- 20. NON-WAIVER.** The waiver by either PG&E or VTA of any breach of any term, covenant, or condition contained in this Master Agreement, or any default in the performance of any obligations under this Master Agreement, shall not be deemed to be a waiver of any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of same.
- 21. ENFORCEABILITY.** If any of the provisions or application of any of the provisions, of this Master Agreement are held to be illegal or invalid by a court of competent jurisdiction or arbitrator/mediator, PG&E and VTA shall negotiate an equitable adjustment in the provisions of this Master Agreement with a view toward effectuating the purpose of this Master Agreement. The illegality or invalidity of any of the provisions, or application of any of the provisions, of this Master Agreement will not affect the legality or enforceability of the remaining provisions or application of any of the provisions of the Master Agreement.
- 22. TERM AND TERMINATION OF CONTRACT.**
- 22.1** This Master Agreement will be for a term of ten (10) years from the Effective Date (as provided in Section 26) unless terminated earlier.
- 22.2** Each Party shall notify the other of any item considered by such Party to be a material breach of this Agreement to allow the allegedly breaching party an opportunity to cure. If such material breach is not corrected or corrective action commenced within ten (10) business days of receipt of a notice to cure sent by the non-breaching Party, or within an extended period authorized in writing by the Party giving notice of the breach, and diligently pursued to completion, the non-breaching Party may, at its option, terminate this Agreement.
- 23. INTEGRATION.** This Master Agreement and any subsequent Notice to Owner constitutes the entire agreement and understanding between the parties as to the Advance Design, Cost Estimates and Relocation work specified herein. This Master Agreement and any subsequent Notice to Owner supersede all prior or contemporaneous agreements, commitments, representations, writings, and discussions between VTA and PG&E, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Neither VTA nor PG&E shall be bound

by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Master Agreement and any subsequent Notice to Owner. This Master Agreement may not be amended except by a written agreement executed by both PG&E and VTA.

24. ASSIGNMENT.

24.1 Neither This Master Agreement nor any of the rights, interests or obligations hereunder shall be assigned or delegated, directly or indirectly, by a Party without the prior written consent of the other Party, and any attempt to assign or delegate without such consent shall be void; provided, that the other Party's consent shall not be required for (a) assignments to affiliates, where, in the absence of the other Party's consent thereto the assigning Party retains responsibility for the payment and performance of all of its obligations and liabilities hereunder; and (b) assignments by operation of law in connection with any merger or consolidation of a Party with or into a Person whether or not such Party is the surviving or resulting Person.

24.2 The provisions of this Master Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties.

25. SURVIVAL. The provisions of this Master Agreement which by their nature should survive expiration, cancellation or other termination of this Master Agreement, including but not limited to provisions regarding confidentiality (Section 12.4) and availability of information (Section 11), shall survive such expiration, cancellation or other termination.

26. EFFECTIVE DATE, SCOPE. PG&E will advise file a copy of this Agreement upon execution by PG&E and VTA with the California Public Utilities Commission (CPUC) pursuant to General Order 96-B, Section 8.2.3. It shall become effective and binding upon PG&E's filing it with the Commission pursuant to General Order 96-B, Section 8.2.3 and PG&E shall provide a conformed copy of its filing to VTA.

27. AUTHORITY. Each Party represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Master Agreement, (b) the execution, delivery and performance of this Master Agreement by it has been duly authorized by all necessary corporate or other requisite actions, (c) it has duly and validly executed and delivered this Master Agreement, and (d) this Master Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and general principles of equity.

28. COUNTERPARTS. This Master Agreement may be executed in counterparts, each of which shall be deemed to be an original copy of this Master Agreement, but all of which, when taken together, shall be deemed to constitute one and the same agreement.

Executed:

Pacific Gas and Electric Company

By: Janet Loduca 6/17/12
Vice President Environmental

Santa Clara Valley Transportation Authority

By: _____
Michael T. Burns Date
General Manager

Approved:

By: _____
Thomas B. Smith Date
Purchasing & Materials Manager

Approved as to form:

By: _____
Counsel Date

Executed:

Pacific Gas and Electric Company

By: _____
Janet Loduca Date
Vice President Environmental

Santa Clara Valley Transportation Authority

By: Michael T. Burns 5/16/12
Michael T. Burns Date
General Manager

Approved:

By: Thomas B. Smith 5/15/12
Thomas B. Smith Date
Purchasing & Materials Manager

Approved as to form:

By: Stacy Paul 5/11/12
Counsel Date

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

1st Light Energy	Department of General Services	Norris & Wong Associates
AT&T	Department of Water Resources	North America Power Partners
Alcantar & Kahl LLP	Dept of General Services	North Coast SolarResources
Ameresco	Douglass & Liddell	Occidental Energy Marketing, Inc.
Anderson & Poole	Downey & Brand	OnGrid Solar
BART	Duke Energy	PG&E
Barkovich & Yap, Inc.	Economic Sciences Corporation	Praxair
Bartle Wells Associates	Ellison Schneider & Harris LLP	R. W. Beck & Associates
Bloomberg	Foster Farms	RCS, Inc.
Bloomberg New Energy Finance	G. A. Krause & Assoc.	SCD Energy Solutions
Boston Properties	GLJ Publications	SCE
Braun Blaising McLaughlin, P.C.	GenOn Energy Inc.	SMUD
Brookfield Renewable Power	GenOn Energy, Inc.	SPURR
CA Bldg Industry Association	Goodin, MacBride, Squeri, Schlotz & Ritchie	San Francisco Public Utilities Commission
CLECA Law Office	Green Power Institute	Seattle City Light
California Cotton Ginners & Growers Assn	Hanna & Morton	Sempra Utilities
California Energy Commission	Hitachi	Sierra Pacific Power Company
California League of Food Processors	In House Energy	Silicon Valley Power
California Public Utilities Commission	International Power Technology	Silo Energy LLC
Calpine	Intestate Gas Services, Inc.	Southern California Edison Company
Casner, Steve	Lawrence Berkeley National Lab	Spark Energy, L.P.
Cenergy Power	Los Angeles County Office of Education	Sun Light & Power
Center for Biological Diversity	Los Angeles Dept of Water & Power	Sunrun Inc.
Chris, King	Luce, Forward, Hamilton & Scripps LLP	Sunshine Design
City of Palo Alto	MAC Lighting Consulting	Sutherland, Asbill & Brennan
City of Palo Alto Utilities	MRW & Associates	Tecogen, Inc.
City of San Jose	Manatt Phelps Phillips	Tiger Natural Gas, Inc.
City of Santa Rosa	Marin Energy Authority	TransCanada
Clean Energy Fuels	McKenzie & Associates	Turlock Irrigation District
Clean Power	Merced Irrigation District	United Cogen
Coast Economic Consulting	Modesto Irrigation District	Utility Cost Management
Commercial Energy	Morgan Stanley	Utility Specialists
Consumer Federation of California	Morrison & Foerster	Verizon
Crossborder Energy	Morrison & Foerster LLP	Wellhead Electric Company
Davis Wright Tremaine LLP	NLine Energy, Inc.	Western Manufactured Housing Communities Association (WMA)
Day Carter Murphy	NRG West	eMeter Corporation
Defense Energy Support Center	NaturEner	