

PRODUCT PURCHASE CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation City, and [Supplier's Name], [Legal Identity], (Supplier), as follows:

1. CONTRACT DOCUMENTS. The "Notice Inviting Bids," "Instructions to Bidders," "Bid Proposal," and the "Specifications" including "General Conditions", "Special Conditions" and "Technical Specifications" for the following: [Title] (Bid File No. [Number]) [Alternates (if any)] copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said annexed documents, and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. PRICE. For the estimated monetary consideration of [WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[DOLLAR AMOUNT]), as set forth in the Bid Proposal, the Supplier promises and agrees to furnish or cause to be furnished, in a new and working condition, and to the satisfaction of City, and in strict accordance with the Specifications, all of the items as set forth in the Contract Documents.

3. PAYMENT. The City accepts Supplier's Bid Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Supplier agrees to accept electronic payment from the City.

4. INDEMNIFICATION: To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), the Supplier shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by the City, the Supplier or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. The Supplier's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or by the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

If the Supplier should subcontract all or any portion of the work to be performed under this Contract, the Supplier shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

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IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Supplier's, and this Contract shall be binding and effective upon execution by both parties.

[Supplier's Name],
[Legal Identity]

CITY OF FRESNO,
a California municipal corporation

By: _____

By: _____[Name],

Name: _____

[Name] Purchasing Manager
Finance Department

Title: _____

Dated: _____

(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

Dated: _____

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____

By: _____ Date

Name: _____

Deputy

Title: _____

(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

Dated: _____

No signature of City Attorney required.
Standard Document #FIN-S 4.0 has been used
without modification, as certified by the
undersigned.

By: _____

[City Certifier Name]
[City Certifier Title]
Finance Department

Pursuant to the Special Conditions of the Substation Power Transformer Purchase Contract, Power Transformer Supplier (PTS) hereby approves, as of the Effective Date, the assignment and assumption of the Substation Power Transformer Purchase Contract, as reflected in the assignment and assumption of Assets as set forth in the foregoing Agreement, and agrees to the release of Assignor in paragraph (2) and the novation of the Substation Power Transformer Purchase Contract in paragraph (3) in the ASSIGNMENT AND NOVATION AGREEMENT in the SPECIAL CONDITIONS.

[Name of PTS],
[Legal Identity]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

SCHEDULE A

ASSETS

For purposes of this Agreement, "Assets" shall mean the following:

All of Assignor's rights, duties and obligations under the Substation Power Transformer Purchase Contract with respect to the Substation Power Transformer other than Assignor's rights, which rights, duties and obligations are being retained by Assignor.

The assigned rights, duties and obligations shall include, but not be limited to, any and all of Assignor's:

- (i) rights to completion, testing, storage, insurance and delivery of the Substation Power Transformer;
- (ii) rights in the Substation Power Transformer, once delivered in accordance with the Substation Power Transformer Purchase Contract;
- (iii) duties and obligations to make payments under the Substation Power Transformer Purchase Contract relating to the Substation Power Transformer, including but not limited to Milestone Payments (it being agreed that One Hundred (100%) percent of such payments applicable to the Substation Power Transformer remaining unpaid as of the date of this Agreement shall be included in the Assets described herein);
- (iv) performance obligations and duties relating to the Substation Power Transformer under (and subject to the conditions set forth in) the Substation Power Transformer Purchase Contract.

CITY OF FRESNO SPECIFICATIONS
PRODUCT PURCHASE CONTRACT FOR
SUBSTATION POWER TRANSFORMER
BID FILE NUMBER: 3654

GENERAL CONDITIONS

1. **DEFINITIONS:** Wherever used in the Specifications, including the Instructions to Bidders and the Bid Proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "Bidder" shall mean and refer to each person or other entity submitting a bid proposal, whether or not such person or entity shall become a Seller or Supplier by virtue of award of a Contract by the City.
- (b) "City," "Buyer," "Owner," "Vendee" and "City of Fresno" shall each mean and refer to the City of Fresno, California.
- (c) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, including the Instructions to Bidders, the Bid Proposal and any addenda thereto, the Agreement and other standard Specifications, City's Specifications and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (d) "Contractor" shall mean and refer to the general construction contractor separately engaged by City for installation of the Power Transformer, supplied by PTS, for the City's Substation Expansion Project at the Fresno - Clovis Regional Wastewater Reclamation Facility..
- (e) "Council" and "City Council" shall each mean and refer to the Council of the City.
- (f) "Goods" and "Merchandise" shall each mean and refer to the equipment, material, article, supply or thing to be furnished by the Seller under the Contract.
- (g) "Purchasing Manager" shall mean and refer to the Purchasing Manager of the City.
- (h) "Power Transformer Supplier", "PTS", "Supplier", "Bidder", shall mean and refer to each person or other entity awarded a Contract hereunder and named or to be named in the Contract with the City to furnish the goods or services, or both, to be furnished under the Contract.
- (i) "Specifications" shall mean and refer to all of the Contract Documents.
- (j) "Working day" shall mean and refer to City regular business day.

2. **PRODUCTS LIABILITY INSURANCE:** If these Specifications are for equipment with moving parts, the PTS shall maintain, and provide the City of Fresno with verification of, manufacturer's products liability insurance policy in excess of \$1,000,000 on said Bid Item(s) equipment.

3. **INDEMNIFICATION:** To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), PTS shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Contract, tort or strict liability, including, but not limited to

personal injury, death at any time and property damage) incurred by City, PTS or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. PTS's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or by the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

If PTS should subcontract all or any portion of the work to be performed under this Contract, PTS shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

4. WORKMANSHIP GUARANTY: The workmanship of the goods or services provided to the City by the PTS will be in accordance with generally accepted standards.

5. WARRANTY: For the purchase of equipment and material, the PTS, unless otherwise provided in the Specifications, shall guarantee all items furnished in accordance with the standard guarantee offered by the manufacturer to cities and consumers of the product. The PTS shall be responsible for all warranty costs, including the transportation costs to and from the repair station.

6. PRECEDENCE OF CONTRACT DOCUMENTS: The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this purchase; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Technical Specifications.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence.

7. CONTRACT DOCUMENTS: Upon award of the Contract, the PTS shall execute and submit all required documents (which will include the "Contract," a sample of which is included in these Specifications on page 1.10) to the Purchasing Manager, 2600 Fresno Street, Room 2156, Fresno, California 93721 in a form acceptable to the City of Fresno within 15 calendar days (except in the event federal funding is applicable to this Contract, then 10 working days) from the date of Notice of Award. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the PTS's bid deposit and initiate a departmental recommendation to the Council to award the Contract to the next lowest responsive and responsible Bidder.

8. ASSIGNMENT OF PAYMENT: PTS hereby agrees it will not assign the payment of any monies due it from the City under the terms of this Contract to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due PTS directly to PTS.

9. PATENTS: For the purchase of equipment and material, the PTS shall hold the City of Fresno, its officers and employees, harmless from any and all liability for damages arising out of the use of any patented material, equipment, device or process incorporated into or made a part of or required by the manufacturer's specifications to be used on or in connection with the material, equipment or supplies purchased by the City pursuant to these Specifications, and PTS agrees, by submission of a proposal hereunder, to defend the City, at PTS's sole expense, in any action or suit for damages or injunctive relief on account of any allegedly unauthorized use of or infringement of patent rights on any patented material, equipment, device or process, if the City is named as a defendant in any such action or suit.

10. OSHA COMPLIANCE: For the purchase of equipment and material, the items covered by this Contract must conform with the Safety Orders of the State of California, Division of Industrial Safety,

pursuant to the California Occupational Safety and Health Act, and the Federal Standards established by the Occupational Safety and Health Act of 1970, and their present and future amendments during the term of this Contract. In the event of a conflict between such Safety Orders and Federal Standards, the items shall conform to the respective Order or Standard which is more restrictive.

11. **RECYCLING PROGRAM:** In the event PTS maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, PTS at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

12. **DELIVERY AND EXTENSIONS:** Unless otherwise provided in the Specifications, delivery shall be made F.O.B. the specified place of delivery within the City of Fresno or environs.

If PTS is delayed making delivery by any conditions or events beyond the reasonable control of PTS and without its fault or negligence such as acts of God or the public enemy, acts of City in its contractual capacity or otherwise, illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, illegal general lockouts or other defensive action by employers, whether general or by organizations of employers, fires, floods, epidemics, quarantine restrictions, and delays of common carriers; PTS shall have no claim for damages against City for any such cause of delay, but shall in such cases be entitled to such extension of time as shall reasonably compensate for actual loss of time occasioned thereby, upon application to said City Manager for such extension; provided, that no such extension of time shall be granted unless PTS shall have notified the Purchasing Manager in writing, of the condition or event which is expected to cause a delay in delivery and the actual or estimated number of days of delay anticipated on account thereof, within one week after the commencement or occurrence of the condition or event. PTS shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Purchasing Manager of the cessation of such occurrence. The decision of said City Manager as to the number of additional days, if any, to be allowed for completion of delivery on account of such condition or event, shall be given in writing to PTS.

13. **PAYMENT:** Unless otherwise provided in the Specifications, payment of the Contract price shall be made by City to PTS in lawful money of the United States by warrant of City issued and delivered to PTS in the ordinary course of City business promptly after completion of delivery of the specified item(s) and their acceptance by City.

14. **TERMINATION FOR CONVENIENCE:** The City reserves the right to terminate this Contract upon 60 calendar days prior written notice to the PTS. In the event of such termination, the PTS shall be paid for satisfactory service performed to the date of termination.

15. **TERMINATION FOR NON-PERFORMANCE:** If PTS shall (i) materially breach any of its obligations under this Contract (including, without limitation, the failure to meet quality standards or to complete delivery, within the time specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract), and (iii) fail to commence and diligently pursue reasonable efforts to cure such breach within 5 calendar days after written notice by the City specifically describing the breach; the City Manager or his/her designee, acting for and on behalf of

the City, may at any time after the expiration of the time for delivery, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such items or service to be furnished which have not been delivered or accepted prior to such termination. Such termination shall be effective upon receipt by PTS of written notice of termination from said City Manager or his/her designee, which notice shall be deemed to have been received by PTS, if mailed, within forty-eight hours to PTS's address as contained in the PTS's Bid Proposal or, if personally delivered, upon the delivery thereof to PTS, the authorized representative of PTS, or to the PTS's said address.

The PTS may terminate this Contract if City materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within 30 calendar days after written notice by the PTS specifically describing the breach. Such termination shall be effective upon receipt by City of written notice of termination from PTS, which notice shall be deemed to have been received by City, if mailed, within forty-eight hours to City's address as contained on the signature page of the Contract or, if personally delivered, upon the delivery thereof to the authorized representative of City or to City's said address.

16. NOTICES: Except as otherwise expressly provided in the Specifications, any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Bid Proposal in the case of the PTS and at the address set forth on the signature page of the Contract in the case of the City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

17. BINDING: Subject to the following section, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

18. ASSIGNMENT: The Contract is personal to the PTS and there shall be no assignment, transfer, sale, or subcontracting by the PTS of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale or subcontracting by the PTS, its successors or assigns, shall be null and void unless approved in writing by the City.

19. COMPLIANCE WITH LAW: In providing the services required under this Contract, PTS and its subcontractors shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Contract.

20. WAIVER: The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

21. HEADINGS: The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Contract.

22. SEVERABILITY: The provisions of this Contract are severable. The invalidity, or unenforceability of any one provision in this Contract shall not affect the other provisions.

23. INTERPRETATION: The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be

ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

24. ATTORNEY'S FEES: If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of the Contract, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

25. EXHIBITS: Each exhibit and attachment referenced in this Contract is, by the reference, incorporated into and made a part of this Contract.

26. CUMULATIVE REMEDIES: No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. NO THIRD PARTY BENEFICIARIES: The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties other than expressly identified within this section. The parties do intend that in the event that the State of California is funding the purchase hereunder, that the State of California be a third party beneficiary under this Contract and all rights, interest and benefits of this Contract accrue to the State.

28. FUNDING: This Contract is contingent on the appropriation of funds by City. Should funds not be appropriated, this Contract may be terminated by City upon prior written notice to PTS notwithstanding any other provision of these General Conditions.

29. GOVERNING LAW AND VENUE: The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Contract and any rights and duties hereunder shall be Fresno County, California.

30. EXTENT OF CONTRACT: Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

31. MODIFICATIONS AND CHANGE ORDERS: This Contract may be modified only by written instrument duly authorized and executed by both City and PTS in accordance with City's current applicable contract change order resolution, as may be revised. The City reserves the right to add, modify or delete items from the Contract including, without limitation, the Special Conditions and Technical Specifications. Any such changes shall be made only by means of a formal change order signed by both the City and the PTS.

CITY OF FRESNO BID SPECIFICATIONS
PRODUCT PURCHASE CONTRACT FOR
SUBSTATION POWER TRANSFORMER
BID FILE NUMBER: 3654

SPECIAL CONDITIONS

SUPPLIER'S AUTHORIZED REPRESENTATIVE

The name, mailing address, telephone number, any e-mail address and any facsimile number of POWER TRANSFORMER SUPPLIER's authorized representative shall be provided in writing by POWER TRANSFORMER SUPPLIER (PTS) no later than 5 calendar days following the issuance by the City of the Notice to Proceed.

DELIVERY

Delivery shall be made within Three Hundred Sixty Five (365) calendar days from the date of issuance by the City of the Notice to Proceed. The PTS must complete delivery in its entirety within Ninety (90) calendar days or must receive written approval from the City for an extension of the delivery date. **Any goods deemed by the City to be defective, or any wrong parts shipped in error, must be replaced within Twenty One (21) calendar days of notification. The City must be notified Forty Eight (48) hours in advance of delivery or shipment may be refused.**

Delivery of items is to be F.O.B. DESTINATION, FREIGHT PREPAID AND ALLOWED, to:

REGIONAL WASTEWATER RECLAMATION FACILITY
5607 W. Jensen Avenue
Fresno, CA 93721

ATTN: Raul Gonzalez

Delivery is to be made between the hours of 8:00 A.M. and 3:00 P.M. and during regular City of Fresno working days.

NON-DELIVERY

If the PTS fails to meet delivery requirements, the City may, but is not obligated to, procure the goods from another source and recover any loss occasioned thereby (including, without limitation, any increase in cost and liquidated damages for PTS's delay up to date of delivery and acceptance by City of goods from another source), from any unpaid balance due the PTS or through reduction of any future invoices. Otherwise, PTS will reimburse City within 30 days of receipt of invoice from the City. The price paid by the City shall be considered the prevailing market price at the time purchase is made. City will notify PTS of any decision to procure the goods from another source. Such notification may be by telephone, electronic mail, or facsimile to PTS or PTS's authorized representative.

LIQUIDATED DAMAGES

Time of delivery is of the essence, and the City and PTS, by executing the Contract, each agree that actual damages to the City, and actual damages for the inconvenience and loss which will flow to the inhabitants of the City, from any delay in delivery beyond the date or dates provided herein, or portions thereof, are extremely difficult or impossible to determine, and, accordingly, it

is agreed that the PTS shall be liable for and shall pay to the City, as fixed, agreed, and liquidated damages, and not as a penalty the sum of ONE HUNDRED FIFTY DOLLARS AND NO CENTS **(\$150.00)** per day for each calendar day of delay in delivery of item(s) from the maximum delivery date as specified herein or in any written extension of time granted by the City. Such payment due the City will be deducted by the City from any payment due to the PTS for item(s) delivered. Otherwise, PTS will reimburse City within 30 days of receipt of invoice from the City.

ASSIGNMENT AND NOVATION AGREEMENT

PTS consents, approves and agrees that City may assign to Contractor the Contract pursuant to an Assignment and Novation Agreement substantially in the form as follows in these Special Conditions. PTS agrees to sign and return such Agreement within 5 calendar days following receipt of the completed form from City (after award and execution by City of the separate contract with Contractor for installation) and execution thereof by Contractor. The effective date of such Agreement shall be the effective date of the separate contract between City and Contractor for the installation.

PAYMENT

The PTS must invoice the correct department in the City of Fresno, in order to initiate the payment process. The invoice shall be supplied in duplicate and conspicuously displayed with the City of Fresno Purchase Order Number and shall be sent to:

REGIONAL WASTEWATER RECLAMATION FACILITY
5607 W. Jensen Avenue
Fresno, CA 93706

ATTN: Raul Gonzalez

ASSIGNMENT AND NOVATION AGREEMENT

THIS ASSIGNMENT AND NOVATION AGREEMENT (this "Agreement") is made as of [Date] by and between the City of Fresno ("Assignor"), a California municipal corporation having its principal place of business at 2600 Fresno Street, Fresno California 93721, and [Name of Contractor] ("Assignee"), a [Assignee Legal Identity] having its principal place of business at [Assignee Address], and [Name of PTS] ("PTS"), a [PTS's Legal Identity] having its principal place of business at [PTS's Address].

WHEREAS, Assignor and PTS are parties to a Substation Power Transformer Purchase Contract for the purchase of a Power Transformer (Bid File No. 3654), dated [Date], which remains in full force and effect (as amended or otherwise modified to the date hereof, the "Substation Power Transformer Purchase Contract"); and

WHEREAS, Assignor desires to transfer and assign to Assignee its rights, duties and obligations under the Substation Power Transformer Purchase Contract with respect to the Substation Expansion Project (as defined below) as more fully set forth on SCHEDULE A hereto (the "Assets"), attached hereto and incorporated by reference herein; and

WHEREAS, Assignee desires to acquire the Assets from Assignor for the consideration set forth below and on the terms and conditions hereinafter set forth; and

WHEREAS, Assignor desires to be discharged from the performance of the obligations enumerated in the Substation Power Transformer Purchase Contract with respect to the Assets; and

WHEREAS, PTS is willing to release Assignor from the obligations enumerated in the Substation Power Transformer Purchase Contract only with respect to the Assets and to consent to Assignee assuming such obligations.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree for themselves, their successors and assigns, as follows:

1. Assignor hereby assigns, transfers, conveys and delivers to Assignee, effective as of [Date] (the "Effective Date"), all of Assignor's right, title and interest in, to and under the Assets, subject to any existing liens and encumbrances on the Assets in favor of PTS arising under the terms of the Substation Power Transformer Purchase Contract, but free and clear of all other liens and encumbrances.

2. Assignee hereby accepts such assignment and agrees to assume, from and after the Effective Date, all of Assignor's rights, duties and obligations in, to and under the Assets set forth in SCHEDULE A, subject to any liens and encumbrances on the Assets in favor of PTS arising under the terms of the Substation Power Transformer Purchase Contract, but free and clear of all other liens and encumbrances. Upon such assignment and assumption, Assignor shall be released from all rights, duties and obligations with respect to the Assets, and Assignee agrees to reimburse Assignor for and hold Assignor harmless against any obligation to perform any of the assigned duties and obligations included in the Assets.

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3. Assignor, Assignee and PTS hereby agree that this Agreement shall constitute a novation of the obligations of Assignor under the Substation Power Transformer Purchase Contract solely with respect to the Assets. Accordingly, all of the rights, duties and obligations of Assignor under the Substation Power Transformer Purchase Contract are hereby extinguished with respect to the Assets, but only to the extent they have been assigned to and assumed by Assignee hereunder. All of Assignor's rights, duties and obligations under the Substation Power Transformer Purchase Contract not expressly assigned and assumed by Assignee hereunder shall be retained by Assignor. PTS recognizes Assignee as Assignor's successor in interest in and to all of Assignor's rights, duties and obligations in, to and under the Assets.

4. In consideration of the assignment of the Assets, Assignee has entered into that separate contract with Assignor, dated [Date], for the installation of the Substation Power Transformer (i.e., [installation Contract Title] for Bid File No. 3654).

5. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns, and matters herein with respect to the Substation Power Transformer Purchase Contract shall inure to the benefit of PTS and its successors and assigns from and after the Effective Date.

6. The parties hereto agree that they will take those actions reasonably necessary to carry out the matters contemplated by this Agreement or any of its provisions.

7. Assignor, Assignee and PTS consent to all of the provisions of this Agreement.

8. For purposes of this Agreement, "Substation Power Transformer" means the Power Transformer (Bid Item No. 1 of the Substation Power Transformer Purchase Contract including, without limitation, all warranty work and providing of maintenance manuals).

9. Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings as set forth in the Substation Power Transformer Purchase Contract.

10. Assignee indemnifies Assignor from and against any loss, cost, or expense, including attorney fees and court costs relating to the failure of Assignee to fulfill obligations under this Agreement.

11. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties thereunder shall be Fresno County, California.

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