

MEMORANDUM OF UNDERSTANDING
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY AND
THE CITY OF CHULA VISTA

This Memorandum of Understanding (“MOU”) is entered into this 12th day of October 2004, by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“SDG&E” or “the Company”) and the CITY OF CHULA VISTA, a chartered municipal corporation (“City”), hereinafter collectively referred to as “the Parties,” with regard to the following:

A. SDG&E currently provides the distribution and sale of natural gas and electricity within the City’s jurisdictional boundaries on a month to month basis pursuant to the terms of the franchise entered into by the Parties and effective as of July 1, 1998.

B. Pursuant to its rights as a charter city, the City formed its own municipal utility. In the pursuit of its municipal utility goals, the City considered multiple concepts including municipalization, a program to acquire newly constructed distribution facilities known as “greenfield” installations, community choice aggregation, generation and other energy project alternatives.

C. After lengthy negotiations, the City and SDG&E have agreed that it is in the best interest of the Parties, the residents and businesses of the City of Chula Vista, and utility ratepayers of SDG&E, for the City and SDG&E to enter into this MOU providing for specific community-wide benefits and new gas and electricity franchise agreements between the parties incorporating the following terms.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT TERMS

I.1 Cooperation: Both Parties recognize that the interests of the residents and businesses of the City of Chula Vista are best served by a cooperative relationship between the City and SDG&E.

In that regard, SDG&E commits to timely brief, in a reasonable time in advance, the City staff on planned filings related to construction of facilities within the City or as to major rate changes at the California Public Utilities Commission (“CPUC”) or other public agency that may materially affect the residents and businesses of the City and agree to attempt to resolve any issues. The City commits to timely brief, in a reasonable time in advance, and to work with SDG&E to resolve any issues, prior to making any filings by the City to the CPUC or other public agency which may be considered adverse to SDG&E.

I.2 Bayfront Undergrounding: A key objective of the City is to remove all above ground electric lines and associated hardware as described herein and to underground such lines and associated hardware in the area identified in paragraph I.3 as the Bayfront. The City and SDG&E have agreed to work in concert to achieve that result as set forth in this MOU.

I.3 Bayfront Transmission Lines: SDG&E has filed an application with the CPUC for a Certificate of Public Convenience and Necessity (“CPCN”) for construction of a new 230kV line and associated hardware that runs from the proposed Otay Mesa power plant through Chula Vista including, in part, the Bayfront (the “Project”). City recognizes the significance of this Project to SDG&E and will coordinate meetings with the CPUC staff and commissioners. SDG&E and City will cooperatively work to achieve the objective of undergrounding the 230kV line including cables, splices, conduits, vaults, and any associated hardware (“230 kV Line”) identified on the map that is attached hereto as Attachment A that were originally identified in the CPCN application to be above ground (“Alternative”) at the location commencing south of the Sweetwater River at

approximately Tower 189507 south to approximately Tower 188701 where there will be the addition of two single pole structures located approximately at Towers 188701 and 18700 and a cable pole located adjacent just north of Tower 88701. The designated area shown from Towers 189507 to approximately 188701 shall hereinafter be referred to as the “Bayfront”. The City and SDG&E will actively support the Alternative in the pending environmental and regulatory review process for the Project. The City and SDG&E will support the Project as modified by the Alternative and will mutually continue efforts at the CPUC to provide justification for the Alternative and detailing the special circumstances that exist to reinforce the joint position on said Alternative. At this time, SDG&E has no plans for a 500 kV project along the Bayfront. In the event at some time during the term of this MOU additional transmission or distribution lines are needed along the Bayfront, SDG&E agrees it will file for such lines to be undergrounded as a preferred alternative and work cooperatively with the City to maintain this area as an underground district.

I.3.A Upon the FERC, ISO, and CPUC’s approval, as necessary, acceptable to SDG&E, to proceed with the construction of the Project with the Alternative, the 230 kV Line would be placed underground in conjunction with its construction, currently scheduled to begin July 2005 and be completed by June 2007, dependent on the timing of CPUC approval and other required permits. Approval shall be deemed acceptable to SDG&E provided that it is not materially different from the application (submitted and as may be revised by SDG&E and as may be modified by the Alternative), not materially detrimental to SDG&E, and the cost of said Project will be fully collected in rates. This undergrounding construction, currently estimated to cost approximately \$31 to \$36 million, would be done and paid for by SDG&E consistent with its rules and regulations for electric transmission construction.

I.3.B. The City agrees that it will work cooperatively to minimize costs and expedite the construction of the Alternative, ongoing maintenance, 20A projects, new service extensions, and other SDG&E utility projects that are consistent with City policies, including expeditious processing of all permits necessary for SDG&E’s design, construction and maintenance of the facilities associated with the construction of the 230

kV Line including the undergrounding, consistent with all laws and regulations applicable to the Project. Consistent with all laws and regulations, the City will also expeditiously process any coastal development permits and timely provide any applicable exemptions necessary for the construction of the Project including the Alternative. The City will assist SDG&E in meeting all requirements so that City may timely issue permits consistent with all applicable laws and regulations. Both Parties agree to cooperate to the fullest extent possible to obtain additional easements that may be needed as a result of this undergrounding and reduce the costs for undergrounding or removal of all facilities described herein. The Parties understand that the schedules set forth in this MOU are estimates only and dependent on the timely issuance of all required federal, state, and local regulatory approvals, permits, and authorizations.

I.4 Existing 138 kV Transmission: There are currently three 138 kV circuits, cables, splices, conduit, vaults and associated hardware (“138 kV circuit”) from the South Bay switchyard proceeding north overhead along the Bayfront. In addition, two of the existing 138 kV circuits continue to proceed south of the switchyard then east through Chula Vista. The City has a primary objective to underground the currently existing, north and south, 138 kV circuits as described below and to eliminate the associated bridge structures and associated hardware. The Parties agree to work in concert as described herein to achieve such goal.

I.4.A. There are three required conditions for undergrounding or removal of all of the existing 138kV circuits. First, the proposed 230 kV Line along Chula Vista’s Bayfront must be approved by the CPUC and undergrounded. Second, the Main Street substation or “suitable alternative location in San Diego” must be upgraded as set forth in Section I.4.B to a 230kV facility (“Upgrade”). Finally, the City designates 20A funds for the undergrounding of one of the three 138kV circuits, described herein as Tie Line 13815 (Tie Line 13815 consists of the 138 kV Transmission lines). In addition, with respect to the undergrounding of the 138 kV circuits from Tower 281763 and south to Towers 188700 or 188701, as described in Attachment A, is conditioned upon the removal or relocation of switchyard as set forth in I.7 below.

I.4.B. SDG&E will file all needed application with the CPUC and other applicable regulatory agencies (except the City of San Diego Coastal Permit which will be applied for by SDG&E within one month of receiving CPUC approval of said application and other permits needed during construction), by March 31, 2005 for the Upgrade and the removal of the two 138 kV circuits and associated bridge structures along the Bayfront from Tower 189507 to Tower 281763. After having received all necessary FERC, CPUC and ISO approvals acceptable to SDG&E, the Main Street substation will be upgraded and/or moved. Approval shall be deemed acceptable to SDG&E provided that it is not materially different from the application (submitted and as may be revised by SDG&E), not materially detrimental to SDG&E, and the cost of said Upgrade will be fully collected in rates. As a result of the upgrade, SDG&E will remove two 138 kV circuits and underground 138 kV circuit Tie Line 13815 on the Bayfront from Tower 189507 to Tower 281763 provided City has timely designated the use of 20 A funds to accomplish the undergrounding of Tie Line 13815 prior to the Upgrade. SDG&E has agreed that as a part of the upgrade to the Main Street substation, the associated two 138KV circuits will be removed and the cost of removal will be borne by SDG&E.

I.4.C The cost to underground Tie Line 13815 on the Bayfront from Tower 189507 to Tower 188701 is currently estimated to cost \$14 million (in 2004 dollars). The City will pay the actual cost for undergrounding Tie Line 13815 utilizing its 20A funds or any other alternative funding the City may have.

I.4.D In order to fund the undergrounding of Tie Line 13815, the Parties agree that the City will reserve and designate its entire unspent 20A allocation, estimated to be \$5 million, for the funding of the undergrounding for Tie Line 13815. The City will designate and dedicate one half of its \$2 million annual allocation (\$1 million annually) from 2004 through 2013 as additional initial funding for undergrounding Tie Line 13815. The undergrounding is scheduled to occur prior to 2013 however, the City may borrow ahead for up to the entire \$10 million previously described to fund Tie Line 13815. If this amount is still not sufficient and the Franchises are in effect, the City will be permitted to borrow forward additional 20A funds of \$1 million annually if necessary to

complete the funding of the undergrounding of Tie Line 13815 not to exceed \$5 million (“Supplemental Borrowed 20A Funding”).

I.5 Supporting Structures: The estimated target date for the removal of the two 138 kV circuits and supporting steel lattice bridge structures, high voltage insulators, overhead conductors and all associated hardware (“Supporting Structures”) north of Tower 281763 shall be by or before the end of 2008 conditioned upon the following: (1) the City has authorized the use of available 20A funds for the undergrounding of Tie Line 13815, (2) the 230kV Line has been energized, (3) the Main Street substation or alternative site has been upgraded to 230kV, and (4) Tie Line 13815 has been undergrounded north of Tower 281763 in accordance with Section I.4.B. SDG&E will remove the Supporting Structures that supported those 138kV lines at its sole cost. The cost of this removal to SDG&E is currently estimated to be \$5 million.

I.6 Existing 69 kV Transmission: There are also 69 kV circuits on wooden poles along the Chula Vista Bayfront. The City can fund the undergrounding of these lines with any of its 20A allocations not committed to Tie Line 13815, or any other alternative funding the City may have. Any advances for 20A funds (not including the Supplemental Borrowed 20A funding) in excess of the amount needed to fund the undergrounding of Tie Line 13815, can also be used for undergrounding these facilities. The Parties agree to work cooperatively, consistent with the overall objectives of the City, to remove such poles at the earliest time practicable.

I.7 Switchyard: In the event the Project has been constructed, the Main Street Substation has been Upgraded to 230 kV, and the South Bay Power Plant can be and is retired, replaced, or relocated such that the facility cannot be returned to service without new authorization from any and all required authorities, and all necessary SDG&E Board and FERC, CPUC and California Independent System Operator (CalISO) approvals acceptable to SDG&E are acquired for the relocation of the switchyard, SDG&E will relocate the switchyard at no cost to the City provided that the City provides, at no cost to SDG&E, adequate land for the new switchyard in an acceptable location and land rights as defined below to SDG&E to interconnect with its electric system. The approvals

acquired for the relocation of the switchyard shall be deemed acceptable to SDG&E provided that it is not materially different from the switch yard relocation application (submitted and as may be revised by SDG&E), not materially detrimental to SDG&E, and the cost of said relocation will be fully collected in rates. SDG&E will consider the following factors in determining an acceptable location: (1) The new location must have permanent easement and the same entitlements as are currently held by SDG& E for the existing switchyard or an alternative acceptable to SDG&E. (2) Such a new Switchyard would be located at an alternative location on Chula Vista's Bayfront, west of I-5, adjacent to existing right of way and on land that is environmentally clean and seismically acceptable, or, if circumstances warrant, at such location as the parties may mutually select. (3) The footprint for a new Switchyard would be at least 450 x 650 feet depending on the connections. The cost to SDG&E is currently estimated to be approximately \$50 million. Upon relocation of the Switchyard and pursuant to sections 1.4A and 1.4C, the 138 kV circuit located from Tower 281763 to approximately Tower 188701 will be undergrounded once the City has designated the 20A funds or other alternative funding the City may have (with Tower 188700 remaining above ground). SDG&E will work with the City to minimize overhead structures once the location of the new Switchyard is determined. SDG&E will include the removal of the other 138 kV circuit and the Supporting Structures, including Tower 188701, with its application for the relocation of the Switchyard. This removal of said 138 kV, Supporting Structures, and Tower 188701 will be done and paid for by SDG&E consistent with its rules and regulations. The City will timely process all necessary City permits and support SDG&E in its applications to accomplish this construction, consistent with all laws and regulations applicable to SDG&E and the City.

I.8 Nonperformance: It is recognized by both Parties that completion of key objectives is crucial to this MOU. However, timely performance by SDG&E is, in part, outside of its control.

I.8.A. In the event that the City has fulfilled its obligations hereunder, and through no other fault of the City, the Parties are unsuccessful in achieving removal and/or undergrounding of the 230kV and 138kV lines along the Bayfront as determined

by a CPUC final decision, SDG&E agrees the City has not achieved its primary benefit hereunder. At such time as the CPUC has denied the actions requested in Sections 1.3, 1.4, and 1.5, and a period of sixty (60) months from March 31, 2005 has passed, section 1.8.B as to the statutory franchise fee amount (immediately following) and the obligation of the City to refrain from Distribution Services set forth in section 1.14.A will be waived by SDG&E. The occurrence of any such waiver does not terminate the grant of franchise.

I.8.B. To the extent that SDG&E no longer provides exclusive energy utility distribution and transmission services in the City, as defined above, it has not achieved one of its primary benefits hereunder. To the extent that this situation occurs, the Parties agree that the compensation under the franchise agreements will be revised to provide that concurrent with such event for the remainder of the term the City will be paid the statutory franchise fee amounts payable to general law cities under the California Public Utilities Code and standard Tariff Rule 20A allocations.

I.9. **Community Choice Aggregation:** SDG&E will cooperate with the City's efforts to participate in Community Choice Aggregation as it is implemented by the CPUC. Once the regulatory rules have been established, and all legal appeals of SDG&E have been exhausted, SDG&E will comply with the rules and regulations implementing such CPUC orders and state law.

I.10. **Industrial Development Revenue Bonds:** For the term of the MOU, SDG&E grants to City an exclusive right to be the issuer of SDG&E's Industrial Development Bonds ("IDB") issues and refinancings on the following conditions:

- a) The processing of IDB issues and refinancings are completed in a timely manner.; and
- b) Chula Vista's issuance charge is no more than 35 basis points (in addition to Chula Vista's administrative costs related to bond issuance, such costs are limited to the CITY's actual costs directly related to the processing of the bond issuance); and

- c) Chula Vista charges no annual fee or costs; and
- d) Chula Vista's Bond Counsel indicates that Chula Vista's involvement with respect to each issue or refinancing is permissible under the then current tax laws and this it is not necessary to obtain a Superior Court judgment in a validation action.

The City and SDG&E must follow a reasonable schedule of activities in order to enable SDG&E to obtain available allocation of state ceiling on qualified private activity bonds or to close transactions in a timely fashion that does not detrimentally impact the ability to obtain such funding by SDG&E on a timely basis or the rates available, to be mutually developed by SDG&E and the City, including timely submission of the California Debt Limit Allocation Committee ("CDLAC") applications, approvals of City Council resolutions, and execution of bond documents. Additionally the City will not have approval authority over, or be able to designate capital projects associated with such financings.

Notwithstanding the forgoing, SDG&E will provide the City with a list of the designated capital projects associated with said financing. In the event the City procedures as implemented do not provide SDG&E the ability to get the funding in a timely manner as set forth herein, SDG&E may use an alternate issuer.

I.11. City Permitting and Review: On the effective date of the MOU, SDG&E will pay the City a one-time fee, in an amount of \$250,000, for development of standardized and expedited permit processes and requirements for utility projects and maintenance work consistent with CPUC regulation and generally accepted industry standards. SDG&E and the City will develop a standards manual to address the issues herein and will be completed within 120 days of the effective date of this MOU. The City and SDG&E commit to work together to streamline and expedite City permitting and processes for 20A and other utility work, including construction of new service infrastructure and maintenance on existing infrastructure, to minimize costs and maximize benefits to the Parties.

I.12. **Substation Beautification and Western Chula Vista Parks:** SDG&E will provide \$105,000 of services to beautify electric substations within the City. SDG&E will provide to the City an additional \$375,000 in services performed by SDG&E which are acceptable to the City for use of transmission rights of way as park space in western Chula Vista, consistent with and that would not interfere with operation, practices, and service of the utility.

I.13. **Public Purpose and Other Program Funding:** The Parties recognize that SDG&E collects certain amounts generally referred to as “Public Purpose Program” (“PPP”) funds from each ratepayer. In order to maximize the effectiveness of partnering between the City and SDG&E in this area, SDG&E and the City will do the following:

I.13.A. **Public Purpose Funding – Energy Efficiency:** Contingent on SDG&E obtaining the necessary funding and associated approvals from the CPUC, including SDG&E’s administration of these programs in Chula Vista, SDG&E commits to develop a portfolio of program activities including PPPs to benefit the City and its residents by an estimated range of two million dollars (\$2,000,000) per year over a five year period (for a total of ten million dollars), the specific annual expenditures being dependent upon a number of factors which include, but are not limited to: the inventory of qualified projects within the City; the success of the cooperative efforts of the Parties to identify and pursue qualified projects; the ability to gain verifiable energy savings; and the actions of the CPUC. Contingent on SDG&E obtaining the necessary funding and associated approvals from the CPUC, SDG&E agrees to cooperatively work with the City to continue such Public Purpose Programs for the life of the Franchise.

I.13.B. **New Funding Opportunities:** SDG&E will consult with City at the earliest reasonable opportunity, with respect to the programs, events and services to be implemented within the City, including, but not limited to, residential and commercial new construction project design assistance and incentives, commercial and industrial programs, demand reduction, residential rebates, marketing and outreach, technical assistance, and sustainable communities. Further, SDG&E agrees to work with the City on the creation of new energy efficiency programming to benefit its citizens, which

programs would be submitted for CPUC consideration and approval throughout the franchise term.

I.13.C. The City will support, consistent with City guidelines and policies, SDG&E at the CPUC and other agencies in SDG&E's efforts to retain and promote energy efficiency programs and SDG&E will support and encourage the City's development of such programs.

I.14. **Franchise Agreements:** As a condition precedent to the other terms of this MOU, the parties will finalize and have in effect a new gas utility franchise agreement and a new electricity utility franchise agreement ("Franchises") approved by the City Council and SDG&E Board of Directors including the following terms:

I.14.A. **Grant:** The City will grant franchises for gas and electric service to SDG&E and will commit that the City will not participate in the provision of electric or natural gas Distribution Services by itself or others within its jurisdictional boundaries for the term of the franchises. For the purposes of this MOU "Distribution Services" shall mean the ownership and/or operation by the City itself, or with or by any third party, of any facilities, including pipes, wires, and electric and gas utility plant and related services for the transmission or distribution delivery of electricity or natural gas to consumers within the boundaries of the City of Chula Vista. Excluded from this definition is the performance by the City of Chula Vista of (i) those rights and duties specific to community choice aggregation or other sale of power or natural gas commodity to consumers, within or outside CITY limits if authorized and as approved and implemented by the CPUC, if such is required or (ii) generation of electric power.

I.14.B. **Term:** The primary term of the Franchises shall be ten (10) years commencing on the first day of the month following final City Council approval and the City's fulfillment of all City charter requirements. If all the obligations of SDG&E are materially satisfied within such term, SDG&E shall receive an automatic extension of the Franchises of twenty (20) years from the expiration of the primary term under all then existing terms and conditions.

I.14.C. Franchise Fees: The electric franchise fee will increase from the current 1.1 percent to 1.25 percent of the gross annual electricity receipts within the City, or the statutory maximum for general law cities if higher. The gas franchise fee will be 2.0 percent of the gross annual gas receipts within the City, or the statutory maximum for general law cities if higher. If a statutory rate for general law cities becomes effective, the franchise fee increase to the City will become effective at such time as SDG&E is able to collect the increased amount in rates.

I.14.D. Undergrounding Allocation: SDG&E will provide a 20A allocation to the City, from total funds authorized by the CPUC, of \$2 million per calendar year commencing as of January 1, 2004 and continuing for the term of the electric franchise.

I.15. MOU Term: The effective date of this MOU shall be the effective date of the Franchises. The term of this MOU shall be the same term as the Franchises.

I.16 Facilities Placement: SDG&E and City shall cooperate to minimize costs and as to the placement of any current or future transmission line construction and, any necessary underground vaults/conduits, including but not limited to, designing such vaults/conduits to accommodate potential additional circuits and units. SDG&E retains the right to place its facilities to operate its electric system.

General Provisions

II.1 No Reliance: The Parties represent and warrant that they have read all of this MOU and fully understand same, that they have had an opportunity to consult legal counsel, and that they are relying solely upon their own judgment and/or the advice of their own counsel in entering into this MOU, and that no promise, inducement, representation or agreement not contained herein has been made to them by any person. The Parties understand that SDG&E is a regulated public utility and is bound by the rules and regulations of the CPUC, and other agencies having jurisdiction, as they may be amended or changed from time to time. Notwithstanding the above, nothing in this MOU shall be construed to prevent the exercise of all rights by either Party, including

participation in regulatory, regional or any public forum, unless specifically provided herein.

II.2 Binding: This MOU shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the Parties and their respective legal representatives, successors-in-interest and assigns. Notwithstanding the foregoing, the Parties understand and agree that this MOU must be approved by the City Council before it can be binding on the City and by the SDG&E Board of Directors. The Parties agree to negotiate in good faith on such additional terms and provisions as may be necessary and desirable to achieve the objectives outlined in this MOU.

II.3 Authorization: Those persons executing this MOU warrant and represent that they are authorized to execute this MOU on behalf of their respective entities.

II.4 Amendment: No amendment or modification of this MOU shall be valid unless in writing and signed by the Parties. This MOU shall be construed in accordance with the laws of the State of California.

II.5 Counterparts: This MOU may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

II.6 Captions: Captions in this MOU are inserted for convenience of reference and do not define, describe or limit the scope or intent of this MOU or any of its terms.

II.7 Recitals, Exhibits: Any recitals set forth above and any attached exhibits and Diagrams are incorporated by reference into this MOU.

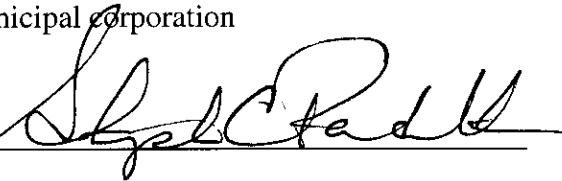
II.8 Delay: City and SDG&E understand that the scheduled dates herein are target dates that may be delayed in the event that regulatory decisions and necessary permits are not timely issued. In addition, delay may be a result of the inability or failure to obtain the appropriate environmental clearances within the time lines set forth herein, or labor disputes, acts of God, war, riots, insurrections, civil commotions, moratoriums, litigation, inability to obtain labor or materials or reasonable substitutes for either, fire, unusual

delay in transportation, adverse weather conditions not normally anticipated in projects of this type, or other casualties beyond the reasonable control of the Parties.

IN WITNESS WHEREOF, the Parties have executed this MOU by their duly authorized representatives as of the date first written above.

CITY OF CHULA VISTA, a chartered
municipal corporation

SAN DIEGO GAS & ELECTRIC
COMPANY, a California corporation

By: 

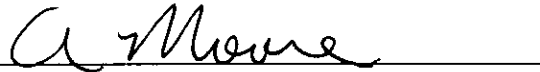
By: 

Stephen C. Padilla
Mayor, City of Chula Vista

Title: Senior Vice President, External
relations & Chief Financial
officer.

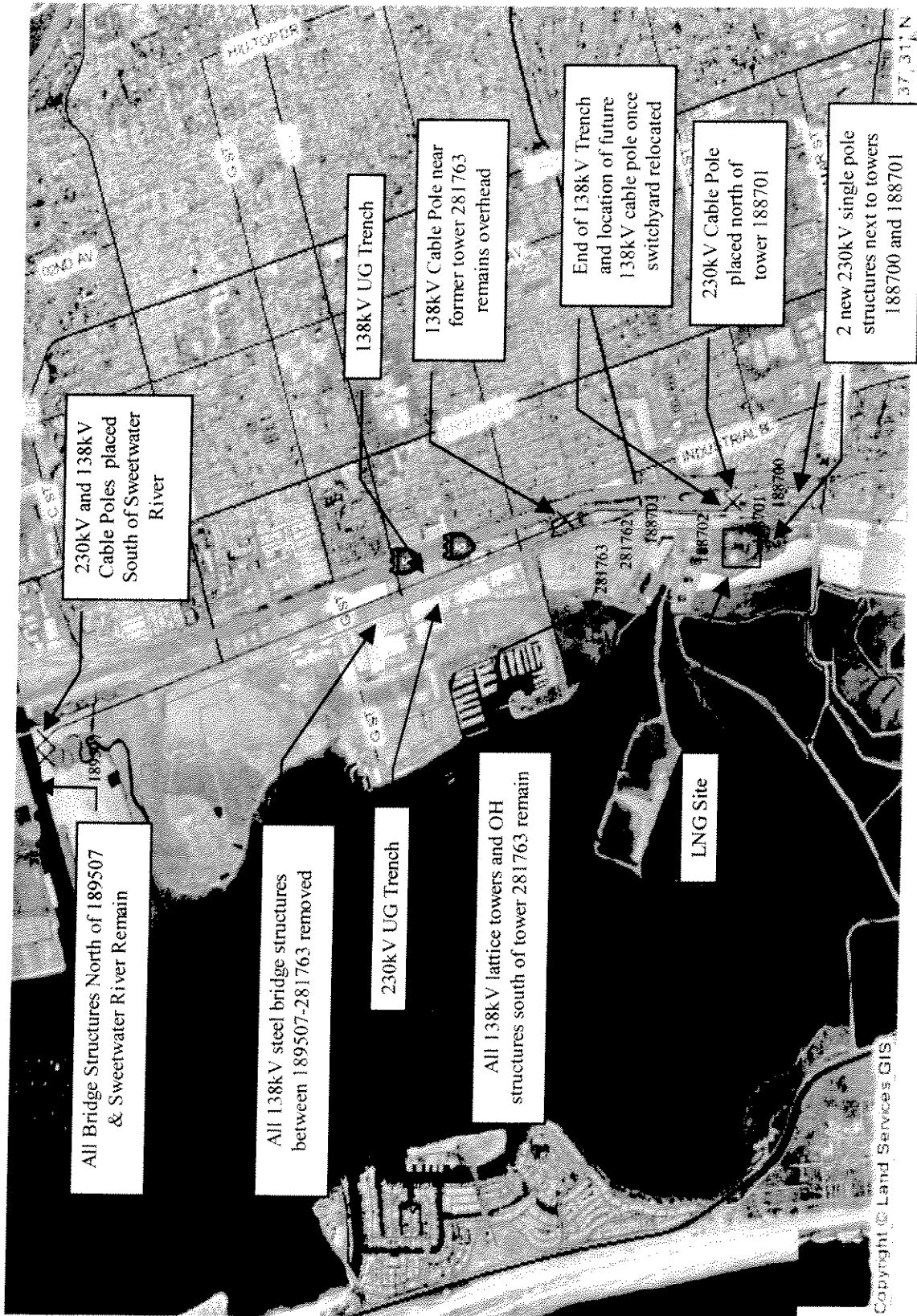
Attest:


Susan Bigelow, City Clerk


Ann Moore, City Attorney

J:\Attorney\Agree\FINAL - SDGE MOU 10 08 04

DRAFT – Attachment A – 9/30/04
Bayfront 230kV & 138kV UG with South Bay Switchyard at Current Location - 2008



- All 69kV to remain OH until 20A funds become available.