

## AMENDMENT TO INTERRUPTIBLE SERVICE AGREEMENT

This Amendment to Interruptible Service Agreement ("Amendment") is entered into this 18<sup>th</sup> Day of June, 2015 by and between the CITY OF VERNON ("Vernon") and Matheson Tri-Gas, Inc. ("Customer").

WHEREAS, Vernon provides interruptible electric service to Customer pursuant to an Interruptible Service Agreement executed on September 18, 2006 ("2006 Agreement"); and,

WHEREAS, pursuant to the 2006 Agreement, in consideration for Customer's agreement to disconnect load within 30 minutes of receiving notice from Vernon, Customer receives monthly bill credit per kW month for interruptible demand Customer has committed to curtail at the time of interruption; and,

WHEREAS, Customer has an existing air separation plant (the "Existing Facility") which Vernon services. Customer intends to construct and operate an additional air separation plant (the "New Facility") and desires that Vernon provide electric service to such New Facility as well.

NOW, THEREFORE IT IS AGREED AS FOLLOWS:

1. Customer agrees to continue receiving interruptible electric service pursuant to the 2006 Agreement for both the Existing Facility and the New Facility, except as provided for below.
2. In section 1.1 of the 2006 Agreement, Customer's "Maximum Demand" and "Interruptible Demand" shall both be increased from "12,650 kW" to "27,000 kW," effective as of Customer's regularly scheduled meter read day (the "Commencement Date") in the first month following the commencement of commercial operation of the New Facility. Customer shall notify Vernon of the date upon which commercial operation of the New Facility commences. For avoidance of doubt, operation of the New Facility in connection with commissioning and performance testing shall not constitute commercial operation.
3. Notwithstanding the terms and conditions of Section 1.1 of the 2006 Agreement, Customer shall be permitted to adjust the Customer's Firm Service Level by delivering a notice in writing to Vernon; provided, however, that while such option may be exercised more than once per calendar year, the Firm Service Level in effect as of November 1 in any given calendar year shall be the Firm Service Level for the subsequent calendar year and may not be changed during that calendar year. For the avoidance of doubt and as an example, if Customer adjusts its Firm Service Level in December 2015, such adjustment will be the effective Firm Service Level for calendar year 2017, unless changed prior to November 1, 2016; provided, further, that adjustment of the Firm Service Level shall be effective as of the date stated in Customer's written notice of adjustment. If no date is stated in such written notice, the adjusted Firm Service Level




shall be deemed effective as of the fifth (5<sup>th</sup>) day following the date of delivery of such written notice.

CITY OF VERNON

MATHESON TRI-GAS

BY:   
W. Michael McCormick, Mayor

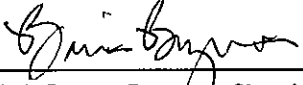
BY: 

ATTEST:

BY: 

  
Maria E. Ayala, City Clerk

APPROVED AS TO FORM:

  
Brian W. Byun, Deputy City Attorney



**CITY OF VERNON**

**GAS & ELECTRIC DEPARTMENT**

**Schedule No. TOU-I**

**GENERAL SERVICE-LARGE INTERRUPTIBLE**

**APPLICABILITY**

This schedule is optional for all customers eligible for service under Schedule TOU-V who commit to curtail at least fifty percent (50%) of such customer's maximum demand, which shall not be less than 7,500 kW per Period of Interruption.

In addition, the following conditions for eligibility shall apply:

1. Service Voltage must be greater than 50 kV; and
2. The customer's Maximum Demand must be 12,500 kW or above; and
3. This schedule is in effect until suspended by the Vernon Gas & Electric Department when, in their judgment, there is no additional need for Interruptible Demand.

**TERRITORY**

Within the city limits of the City of Vernon.

**RATES**

All charges and provisions of schedule TOU-V shall apply as follows:

In accordance with the terms and conditions of this schedule the customer's bill will be credited per the following rate schedule per kW month for all kW in excess of the customer's specified Firm Demand Level. The on-peak and mid-peak bill credits will be based on the difference between the customer's monthly average kW demand (for on-peak and for mid-peak periods, respectively) and the customer's specified Firm Demand Level, where

Authorized by the City of Vernon

Ordinance No.	<u>940</u>	Effective	<u>12/06/83</u>
Resolution No.	<u>2011-112</u>	Effective	<u>01/01/12</u>
Resolution No.	<u>2012-98</u>	Effective	<u>07/01/12</u>
Resolution No.	<u>2012-98</u>	Effective	<u>01/01/13</u>
Resolution No.	<u>2012-98</u>	Effective	<u>07/01/13</u>
Resolution No.	<u>2014-30</u>	Effective	<u>07/01/14</u>



Monthly Average On-Peak kW Demand = Total Monthly On-Peak kWh / Total Monthly On-Peak Hours

Monthly Average Mid-Peak kW Demand = Total Monthly Mid-Peak kWh / Total Monthly Mid-Peak Hours.

Rate Schedule

Interruption Capacity Credits (\$/kW-month)

	Summer		Winter
	<u>May, June, Oct</u>	<u>July, August, Sept</u>	<u>Nov, thru April</u>
On-Peak	4.56	13.65	0.26
Mid-Peak	2.24	6.21	0.59

Charges for Excess Demand may apply under certain conditions, as provided in Special Condition 8.

**SPECIAL CONDITIONS**

1. **Interruptible Demand:** The Interruptible Demand shall be the measured difference between the customer's demand, at the time of interruption, and the customer's Firm Demand Level. During a Period of Interruption, customer is expected to interrupt load such that it uses no more electricity than its specified Firm Demand Level.
2. **Firm Demand Level:** The Firm Demand Level is the Maximum Demand the Department is expected to supply during a Period of Interruption.
3. **Excess Demand:** The Excess Demand shall be the average kW demand measured which exceeds the Firm Demand Level during each Period of Interruption. The average kW demand is the total kWh recorded divided by total hours of interruption during each Period of Interruption.
4. **Interruptible Service Agreement:** To receive interruptible service under this schedule a customer shall sign an agreement for a specified term and Firm Demand Level. Eligible customers shall comply with all the provisions of their respective Agreements.

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5. Notice of Interruption: The Department will give the customer a minimum thirty (30) minutes notice of a Period of Interruption to enable the customer to disconnect the necessary load to prevent Excess Demand. Communication procedures shall be specified in the Interruptible Service Agreement.
  
6. Period of Interruption: A Period of Interruption shall be an interval which commences thirty minutes after Notice of Interruption and which ends upon notification from the Department, during which time the customer will be required to disconnect sufficient load to reduce the demand on the system to the Firm Demand Level. A Period of Interruption can occur:
  - a. Upon the notification from the Independent System Operator (ISO) requiring the Department to shed load, or
  - b. Upon the unscheduled outage of the Malburg Generating Station or any other generating unit internal to the Department system.
  
7. Frequencies and Duration of Interruption: The Periods of Interruption will not exceed ten (10) instances per month or twenty-four per year nor last longer than twelve (12) consecutive hours in any single instance.
  
8. Excess Demand Charge: Upon the first occurrence of Excess Demand during a Period of Interruption, such Excess Demand shall be billed at \$14.20 per kW.  
  
Upon the second occurrence of Excess Demand during a Period of Interruption, such Excess Demand shall be billed at \$21.30 per kW.  
  
Upon the third occurrence of Excess Demand during a Period of Interruption, within the same twelve (12) month period, the customer will be disqualified from further interruptible rate service.
  
9. Verification of Ability to Interrupt: Interruptible Rate Service customers shall periodically be required to demonstrate ability and willingness to disconnect all load except the specified Firm Demand Level within a Notice of Interruption Period. Testing procedures for such verification shall be specified in the Interruptible Service Agreement terms.

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**AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVE ON ELECTRIC SERVICE**

This Agreement for Economic Development Incentive on Electric Service (this "Agreement") is between Matheson Tri-Gas, Inc., a Delaware corporation ("Applicant"), and the City of Vernon.

**RECITALS:**

A. The Economic Development rate was established and is made available at the City of Vernon's sole discretion. The Economic Development rate is set forth in the City of Vernon's rate Schedule ED.

B. Applicant has an existing air separation plant (the "Existing Facility") located within the City of Vernon and is an existing electric service customer of the City of Vernon. Contingent upon the City of Vernon's approval and execution of this Agreement, Applicant proposes to construct and operate an additional air separation plant within the City of Vernon (the "New Facility") and desires that the City of Vernon provide electric service to such New Facility.

C. In consideration of Applicant's commitment to construct and operate the New Facility in the City of Vernon at the contracted demand, the City of Vernon has agreed to modification of the Economic Development rate as set forth in Schedule ED.

**AGREEMENT:** Applicant and the City of Vernon agree to the following terms and conditions:

**1. QUALIFICATION CRITERIA.**

Applicant is a customer currently receiving service under Schedule TOU-V. Applicant agrees that it will remain eligible to receive service under Schedule TOU-V during the term of this Agreement.

The electric load subject to this Agreement is a maximum billing demand of at least 12,500 kW of net new load to the City of Vernon. The minimum 12,500 kW of net new load must be maintained for at least three (3) months during the initial twelve (12) months of the term of this Agreement following the Commencement Date. Only the new load that will be regularly served by the City of Vernon will be eligible for this incentive.

**2. BILL INCENTIVE.**

Electric service to Applicant's premises shall be delivered under Applicant's otherwise applicable tariff ("OAT"), which is Schedule TOU-V. A ten (10) year rate incentive will be applied to the customer's OAT (excluding taxes) as follows:

The initial rate incentive under this Agreement is a five percent (5%) reduction which is in addition to the twenty percent (20%) voltage discount presently applicable to Applicant as set forth in Section 4 of Schedule TOU-V.

In the event the City of Vernon shall modify or replace Schedule TOU-V such that the existing twenty percent (20%) voltage discount is reduced, then the rate incentive under this Agreement shall automatically increase as necessary so that the total discount received by Applicant under this Agreement and the TOU-V volume discount during the ten (10) year term hereof is not less than twenty-five percent (25%).

In addition, in the event that the City of Vernon shall modify or replace Schedule TOU-V or any successor schedule to Schedule TOU-V, and such modification or replacement results in an increase of rates or charges payable by Applicant as compared to rates and charges payable by Applicant under Schedule TOU-V as in effect prior to each such increase, then the City of Vernon agrees that any such rate increase shall be limited to such increases as are necessary to offset increases in the City of Vernon's costs of providing electric service to its customers (and not to increase the City of Vernon's profits therefrom) and agrees that such increases shall be reasonably and fairly allocated across all of its customers. Without limiting the foregoing, the City of Vernon will use its best efforts to ensure that any such modification or adjustment will not cause those components of Applicant's rates within the control of the City of Vernon in any twelve (12) month period to increase by more than five percent (5%). If the increase is greater than five percent (5%), the City of Vernon shall be deemed to have exercised best efforts if either of the following is true: (1) the aggregate rate increase, net of all discounts provided to Applicant, is equal to or less than the rate increase by Southern California Edison's schedule TOU-8 or Los Angeles Department of Water & Power's schedule A3, whichever is greater, for similar time periods; or (2) the increase of those components of Applicant's rates within the control of the City of Vernon occurred notwithstanding the efforts that a prudent person with similar experience and knowledge, desirous of ensuring the result, would use in similar circumstances to ensure that such result is achieved on commercially reasonable terms.

This reduction shall be calculated on the rate components of the Applicant's bill that correlate to service that the City of Vernon provides to Applicant. If needed, the City of Vernon may reduce the foregoing incentive percentage as follows to ensure that revenues equal or exceed the Floor Price. For purposes hereof, the Floor Price shall mean the Floor Price set forth in Schedule ED except that for purposes hereof the "marginal generation cost" component of the Floor Price for any fiscal year shall not exceed the mean Day-Ahead Locational Marginal Price ("LMP") for Vernon Metered Subsystem load aggregation point (on-peak or off-peak, as applicable) for such fiscal year as published by the California Independent System Operator ("CAISO"). To the extent such information is not already in the public domain, upon request, the City of Vernon shall provide such load aggregation point data to Applicant for verification. The foregoing rate incentive under this Agreement will be limited by the Floor Price, as defined in Schedule ED and modified as set forth above. In calculating the Floor Price, the City of Vernon will make use of its best estimate of the marginal generation cost to serve Applicant. The revenues received from Applicant will be reviewed annually and/or at the end of this Agreement to ensure that they equal or exceed the Floor Price for each year of this Agreement, up to the OAT revenue that Applicant would have paid if it had not received the incentive.



Applicant's rate under this Agreement will be subject to an annual review, with potential additional lump-sum charges due to the City of Vernon or credits due to Applicant as set forth in this paragraph. The charges shall ensure that the rate does not fall below the Floor Price each year. Credits, if available after the annual review, will be provided if the Applicant's incentive rate had been previously reduced from the rate incentive set forth above as a result of the application of the Floor Price limitation.

### 3. INCENTIVE CALCULATION.

Terms and conditions necessary for the incentive calculation are defined and agreed to as follows:

The previous twelve (12) months of historical metered data for the Existing Facility have been used to determine Applicant's current demand and monthly usage levels as set forth below, and the incentive will be calculated only on that portion of demand and usage that is in addition to such current demand and monthly usage levels. During the annual and contract term review, the City of Vernon will compare the revenues received to the Floor Price (as modified above) to ensure that the revenues received remain at least equal to the Floor Price (as modified above) throughout the duration of this Agreement.

The City of Vernon reserves the right to reduce the contracted demands stated by the Applicant below if it is determined that the Applicant's actual load at full operation of the Existing Facility and New Facility after the first anniversary of the Commencement Date as set forth in Section 4 below is more than twenty five percent (25%) less than the contracted maximum demand stated below.

The contracted demand of the Applicant's aggregate load (for the Existing Facility and New Facility) following commencement of commercial operation of the New Facility is estimated to be 27,000 kW.

The excluded demands are determined by averaging the Applicant's four (4) highest measured demands during each seasonal period during the twelve (12) month period preceding the date of execution of this Agreement. The City of Vernon and the Applicant agree that the excluded demand is:

July to September: 13,423 kW

May, June, October: 13,526 kW

November to April: 13,534 kW

provided, however, that if Applicant elects to separately meter the New Facility, Applicant's excluded demand for the New Facility will be zero (0) kW for each season. The Incentive Ratio for each month is defined as (i) the difference between the Applicant's maximum demand for that month and the excluded demand divided by (ii) that same month's maximum demand. The Incentive Ratio will be a fraction from zero (0) to one (1) and shall not be less than zero. The Economic Development rate discount is determined as the product of the rate incentive, the



Incentive Ratio and the subtotal of charges on the rate components of the Applicant's bill that correlate to service that the City of Vernon provides to Applicant.

**4. COMMENCEMENT DATE.**

The incentive shall commence on the Applicant's regularly scheduled meter read day (the "Commencement Date") in the first month following the commencement of commercial operation of the New Facility, which shall be within a twenty four (24) month period of the date of execution of this Agreement, as required by rate Schedule ED, provided that such twenty four (24) month period shall be extended by written agreement of the parties to the extent commercial operation of the New Facility is delayed due to Force Majeure events (as defined below). Applicant shall notify the City of Vernon of the date upon which commercial operation of the New Facility commences. For avoidance of doubt, operation of the New Facility in connection with commissioning and performance testing shall not constitute commercial operation.

**5. METERING.**

Applicant agrees to be responsible for all costs associated with providing separate electric metering for the New Facility if separate metering is requested by Applicant or required by the City of Vernon.

**6. TERM OF AGREEMENT.**

This Agreement shall take effect immediately and remain in effect for a term of ten (10) years following the Commencement Date of the rate incentive as set forth in Section 4 above.

**7. TERMINATION AGREEMENT**

Applicant may terminate this Agreement upon thirty (30) days written notice. The City of Vernon may also terminate this Agreement upon thirty (30) days written notice in the event Applicant no longer meets the qualifications described elsewhere in the Agreement and in Rate Schedule ED. Notwithstanding these rights of termination, the Applicant shall be subject to Liquidated Damages as provided in Section 9 of this Agreement, if applicable.

**8. "BUT FOR" TEST**

Applicant attests that "but for" the terms of this Agreement, either on its own or in combination with a package of incentives made available to the Applicant from other sources, the Applicant would not have located, or increased its operations within the City of Vernon. Applicant shall sign the attached affidavit, to that effect.

**9. LIQUIDATED DAMAGES**

If this Agreement is terminated due to Applicant's misrepresentation (in any material respect) or fraud, Applicant shall be liable for liquidated damages that equal 200% of the cumulative difference between (i) bills calculated under the Schedule ED rate for service to the New Facility to the date of termination and (ii) bills that would have been calculated for service to the New

Facility without application of the rate incentive hereof and under the OAT to the date of termination.

#### **10. ASSIGNMENT.**

Applicant may assign this Agreement only if the City of Vernon consents in writing, such consent not to be unreasonably withheld, delayed or conditioned, and the party to whom this Agreement is assigned agrees in writing to be bound by this Agreement in all respects; provided, however, that the City of Vernon's consent shall not be required in the case of (i) an assignment of this Agreement by Applicant to an Affiliate of Applicant or to a successor owner of the Existing Facility and New Facility, who in each case agrees in writing to be bound by this Agreement in all respects with respect to obligations arising from and after the date of assignment, or (ii) a collateral assignment of this Agreement by Applicant to a lender providing financing to Applicant. Unless and until any assignee is deemed by the City of Vernon to be as creditworthy as Applicant or otherwise satisfies the City of Vernon's customary credit support requirements for its electric service customers, Applicant shall remain responsible for such assignee's performance. Thereafter, Applicant shall be released from its obligations under this Agreement. "Affiliate" means, with respect to Applicant, any person or legal entity that, directly or indirectly, (i) controls or owns Applicant, (ii) is controlled or owned by Applicant or (iii) is under common control or Ownership with Applicant, where "own" (including, with correlative meanings, the terms "owned by" and "under common Ownership with") means Ownership of fifty percent (50%) or more of the equity interests or rights to distributions on account of equity of the Person, and "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") means the power to direct or cause the direction of the management or policies of the person or legal entity, whether through the Ownership of voting securities, by contract or otherwise.

#### **11. FORCE MAJEURE**

A "Force Majeure" event means an event beyond the control of the Applicant or of the City of Vernon, which prevents either party from complying with any of its obligations under this Agreement, including but not limited to: (a) any act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (b) contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; (c) riot, commotion, strikes, go slows, lock outs or disorder; or (d) acts or threats of terrorism.

#### **12. FORUM SELECTION**

The parties agree to exclusive jurisdiction and venue in the state and federal courts of the United States located in the State of California, City of Los Angeles for the purpose of litigating any claims or disputes arising out of or relating to this Agreement.

#### **13. ATTORNEYS' FEES**

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.



**14. MISCELLANEOUS.**

This Agreement (a) shall be governed, construed and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules; (b) shall bind and benefit the City of Vernon and Applicant and their respective successors and permitted assigns; (b) may be modified or amended only by a writing signed by each party; (c) may be executed in several counterparts, and by the parties hereto in separate counterparts, and each counterpart, when executed and delivered, shall constitute an original agreement enforceable against all who signed it without production of or accounting for any other counterpart, and all separate counterparts shall constitute the same agreement and (d) embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. To the extent of any conflict between this Agreement and Schedule TOU-V or Schedule ED, this Agreement shall control.

IN WITNESS THEREOF, the Parties have executed this Agreement in multiple originals of equal dignity by their respective duly authorized representatives.

Executed this 18<sup>th</sup> day of June, 2015.

Matheson Tri-Gas, Inc.  
(Applicant)

*T. Hall*  
(Signature)

Thomas S. Hallman  
(Printed Name)

President + CEO  
(Title)

The City of Vernon

*Carlos R Fandiño JR*  
(Signature)

Carlos R Fandiño JR  
(Printed Name)

Dir GAS + ELECTRIC  
(Title)

*[Handwritten mark]*

**AFFIDAVIT FOR ECONOMIC DEVELOPMENT RATE**

By signing this affidavit, an Applicant who locates or adds load in the City of Vernon hereby certifies and declares under penalty of perjury under the laws of the State of California that the statements in the following paragraphs are true and correct.

1. But for the receipt of the discounted economic development rate and the terms of the Agreement, either on its own or in combination with an economic development incentive package, the load attributable to the Applicant's New Facility would not have been located, or added within the City of Vernon.
2. The New Facility load to which the Agreement applies represents kilowatt-hours (kWh) and kilowatts (kW) that either (i) does not already exist in the City of Vernon, or (ii) the Applicant considered expanding to a location outside of the City of Vernon.
3. Applicant has discussed with the City of Vernon the cost-effective conservation and load management measures the Applicant may take to reduce their electric bills and the load they place on the City of Vernon's utility system.
4. On an annual basis, the cost of electricity for the New Facility is estimated to be at least five (5) percent of its actual operating costs, less the cost of raw materials.

Executed this 18<sup>th</sup> day of June, 2015.

Matheson Tri-Gas, Inc.  
(Applicant)

By:   
(Signature)

Thomas S. Hallman  
(Printed Name)

President + CEO  
(Title)

