

1 [Authorizing the execution and delivery of certificates of participation to finance the San
2 Francisco Combustion Turbine Projects and approving property leases, project leases and a
3 trust agreement in connection therewith.]

4 **Resolution authorizing the execution and delivery of certificates of participation to**
5 **finance the acquisition, construction, installation and equipping of natural gas-fired**
6 **combustion turbine generation facilities on City-owned property located at 25th and**
7 **Maryland Street in the Potrero neighborhood and at the San Francisco International**
8 **Airport at the corner of North Access Road and Clearwater Drive; approving the form of**
9 **a trust agreement between the City and County of San Francisco and a trustee**
10 **(including certain indemnities contained therein); authorizing the selection of a trustee;**
11 **approving the forms of property leases between the City and the trustee relating to the**
12 **Potrero site and to the San Francisco International Airport site; approving the forms of**
13 **project leases between the trustee and the City (including certain indemnities**
14 **contained therein) relating to each of the two Projects; approving the form of a**
15 **Memorandum of Understanding between the San Francisco Public Utilities**
16 **Commission and the City; approving the form of an official notice of sale and notice of**
17 **intention to sell for the certificates of participation; approving the form of an official**
18 **statement in preliminary and final form; approving the form of a continuing disclosure**
19 **certificate; and ratifying previous actions taken in connection therewith.**

20 WHEREAS, The City and County of San Francisco (the "City") owns certain real
21 property located adjacent to the planned MTA Metro East light rail vehicle maintenance and
22 operations facility at 25th and Maryland in the Potrero neighborhood (the "Potrero Site") and
23 certain real property located at the San Francisco International Airport at the corner of North
24 Access Road and Clearwater Drive (the "SFO Site"); and
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1 WHEREAS, Under Section 8B.121 of the Charter of the City, the San Francisco Public
2 Utilities Commission (“SFPUC”) is entrusted with exclusive charge of the construction,
3 management, supervision, maintenance, extension, expansion, operation, use and control of
4 all energy supplies and utilities of the City; and

5 WHEREAS, The SFPUC proposes to pursue the acquisition, construction, installation
6 and equipping of natural gas-fired combustion turbine generation facilities at the Potrero Site
7 (the “Potrero Project”) and at the SFO Site (the “SFO Project,” and together with the Potrero
8 Project, the “Projects”); and

9 WHEREAS, Pursuant to Ordinance No. _____, presented concurrently to this
10 Board of Supervisors of the City (the “Board”) (the “Ordinance”), the City is authorized to enter
11 into agreements with Industrial Construction Company, Inc. (“ICC”) to design and build the
12 Projects; and

13 WHEREAS, As described in the Ordinance, the SFPUC is authorized to finalize an
14 agreement with the California Department of Water Resources (the “Department”) for the
15 purchase of power from the Projects over a set term subject to further negotiation and
16 execution of such an agreement by the General Manager of the SFPUC (the “General
17 Manager”); and

18 WHEREAS, As described in the Ordinance, PG&E has agreed to provide for electric
19 and gas interconnections for the Projects, subject to additional modifications as authorized in
20 the Ordinance; and

21 WHEREAS, The Ordinance also approves certain jurisdictional transfer arrangements
22 and lease modifications relative to the use of the Potrero Site and the SFO Site for the
23 respective Projects and adopts certain findings pursuant to the California Environmental
24 Quality Act; and

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1 WHEREAS, The Potrero Project has been permitted and licensed by the California
2 Energy Commission (“CEC”), the state agency charged with licensing thermal power plants
3 larger than 100 megawatts (MW); and

4 WHEREAS, The SFO Project is not subject to licensing by the CEC, but was reviewed
5 by the Planning Department in a two and one-half year process culminating in the issuance of
6 a Final Mitigated Negative Declaration for the SFO Project on January 12, 2007; and

7 WHEREAS, The Board desires to finance the acquisition, construction, installation and
8 equipping of the Projects with proceeds from the sale of certificates of participation (the
9 “Certificates”); and

10 WHEREAS, In connection with the execution and delivery of the Certificates, the City
11 shall enter into a property lease and project lease for each of the Projects, and a trust
12 agreement and certain other related documents; and

13 WHEREAS, It is anticipated that the Certificates will be sold by competitive sale
14 pursuant to an official notice of sale; and now, therefore, be it

15 RESOLVED, BY THIS BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF
16 SAN FRANCISCO AS FOLLOWS:

17 Section 1. Findings. That the Board of Supervisors incorporates by reference all
18 prior findings adopted by the Board of Supervisors for the Projects, including but not limited to
19 those findings set forth in the Ordinance.

20 Section 2. Approval of the Certificates. The Board hereby approves the execution
21 and delivery of the Certificates, which shall be executed and delivered in accordance with a
22 trust agreement as the same is finally executed and delivered. The proceeds of the
23 Certificates will be used to (i) fund the Projects; (ii) fund a reserve fund or reserve surety, as
24 appropriate; (iii) fund capitalized interest; (iv) fund an operating reserve; and (v) pay costs of
25 issuance of the Certificates. The Certificates shall be designated as the “City and County of

1 San Francisco Certificates of Participation” and issued in two series, “2008 Series A (Potrero
2 Energy Reliability Project)” and “2008 Series B (SFO Energy Reliability Project),” or with such
3 other designations as deemed appropriate by the Director of Public Finance or her designee
4 (collectively, the “Director of Public Finance”). The Certificates shall have an aggregate
5 principal amount not to exceed Two Hundred Seventy Three Million Fifteen Thousand Dollars
6 (\$273,015,000), with an interest rate not to exceed twelve percent (12%) per annum. The
7 Certificates shall be subject to prepayment as set forth in the Trust Agreement. To the extent
8 deemed necessary by the Director of Public Finance, this Board authorizes the procurement
9 of credit enhancement for the Certificates, including, but not limited to, municipal bond
10 insurance or a debt service reserve fund surety bond. Notwithstanding Section 13 hereof, the
11 documents authorized herein may be modified or amended to permit the procurement of
12 credit enhancement for the Certificates, to the extent deemed necessary by the Director of
13 Public Finance, upon consultation with the City Attorney.

14 Section 3. Approval of the Trust Agreement and Authorization of Selection of the
15 Trustee. The form of a trust agreement (the “Trust Agreement”) between the City and a
16 trustee, as presented to this Board, a copy of which is on file with the Clerk of the Board, is
17 hereby approved. The Mayor of the City or his designee (collectively, the “Mayor”) is hereby
18 authorized to execute the Trust Agreement, and the Clerk of the Board or her designee
19 (collectively, the "Clerk of the Board"), is hereby authorized to attest to and affix the seal of the
20 City on the Trust Agreement, with such changes, additions and modifications as the Mayor
21 may make or approve in accordance with Section 13 hereof. The Director of Public Finance is
22 hereby authorized to select a trustee to serve as trustee under the Trust Agreement (the
23 “Trustee”).

24 Section 4. Approval of the Property Leases. The forms of property leases between
25 the City and the Trustee providing for the lease of the Potrero Site and the SFO Site from the

1 City to the Trustee (the "Property Leases"), as presented to this Board, for a maximum term
2 not to exceed thirty (30) years from the date of commencement thereof, at a total rent of \$1.00
3 per annum, a copy of which is on file with the Clerk of the Board, are hereby approved. The
4 Mayor or General Manager is each hereby authorized, acting on his sole authority, to execute
5 the Property Leases, and the Clerk of the Board is hereby authorized to attest to and affix the
6 seal of the City on the Property Leases with such changes, additions and modifications as the
7 Mayor or General Manager may make or approve in accordance with Section 13 hereof.

8 Section 5. Approval of the Project Leases. The forms of project leases between the
9 Trustee and the City (the "Project Leases"), providing for the financing of the Projects, as
10 presented to this Board, copies of which are on file with the Clerk of the Board, are hereby
11 approved. The Mayor or General Manager is each hereby authorized, acting on his sole
12 authority, to execute the Project Leases, and the Clerk of the Board is hereby authorized to
13 attest and to affix the seal of the City on the Project Leases with such changes, additions and
14 modifications as the Mayor or General Manager may make or approve in accordance with
15 Section 13 hereof, provided however, that the combined maximum Base Rental (as defined in
16 each Project Lease) scheduled to be paid under the Project Leases in any fiscal year shall not
17 exceed Eighteen Million Nine Hundred and Fifty Thousand Dollars (\$ 18,950,000) and the
18 term of each Project Lease shall not extend beyond 2039.

19 Section 6. Approval of the Memorandum of Understanding. The form of a
20 memorandum of understanding between the City and the SFPUC (the "Memorandum of
21 Understanding"), providing for budgeting of debt service on the Certificates, as presented to
22 this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The
23 Director of Public Finance is hereby authorized to execute the Memorandum of
24 Understanding, with such changes, additions and modifications as the Director of Public
25 Finance may make or approve in consultation with the City Attorney; such approval to be

1 conclusively evidenced by the execution and delivery by the Director of Public Finance of the
2 Memorandum of Understanding.

3 Section 7. Approval of Form of Official Notice of Sale. The form of an official notice
4 of sale relating to the Certificates (the “Official Notice of Sale”), as presented to this Board, a
5 copy of which is on file with the Clerk of the Board, is hereby approved. The Director of Public
6 Finance is hereby authorized to approve the distribution of an Official Notice of Sale for the
7 Certificates, with such changes, additions, modifications or deletions as the Director of Public
8 Finance may approve upon consultation with the City Attorney; such approval to be
9 conclusively evidenced by the distribution of the Official Notice of Sale to potential purchasers
10 of the Certificates.

11 Section 8. Approval of Notice of Intention to Sell relating to the Certificates. The
12 form of a notice of intention to sell relating to the Certificates (the “Notice of Intention to Sell”),
13 as presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby
14 approved. The Director of Public Finance is hereby authorized to approve the publication of
15 the Notice of Intention to Sell relating to the Certificates, with such changes, additions,
16 modifications or deletions as the Director of Public Finance may approve upon consultation
17 with the City Attorney; such approval to be conclusively evidenced by the publication of the
18 Notice of Intention to Sell relating to the Certificates.

19 Section 9. Approval of the Official Statement in Preliminary and Final Form. The
20 form of an official statement relating to the Certificates (the “Official Statement”), as presented
21 to this Board, a copy of which is on file in preliminary form with the Clerk of the Board, is
22 hereby approved. The Director of Public Finance is hereby authorized to approve the
23 distribution of the preliminary Official Statement for the Certificates, with such changes,
24 additions, modifications or deletions as the Director of Public Finance may approve upon
25 consultation with the City Attorney; such approval to be conclusively evidenced by the

1 distribution of the preliminary Official Statement to potential purchasers of the Certificates.
2 The Controller of the City, or his designee (collectively, the “Controller”), is hereby authorized
3 to execute, and the Director of Public Finance is hereby further authorized to approve the
4 distribution of, the Official Statement for the Certificates in final form.

5 Section 10. Approval of the Continuing Disclosure Certificate. The form of a
6 Continuing Disclosure Certificate of the City, as presented to this Board, a copy of which is on
7 file with the Clerk of the Board, is hereby approved. The Controller is hereby authorized to
8 execute the Continuing Disclosure Certificate, with such modifications, changes or additions
9 as the Controller may approve upon consultation with the City Attorney; such approval to be
10 conclusively evidenced by the execution and delivery of the Continuing Disclosure Certificate.

11 Section 11. Reimbursement. To pay costs of the Projects incurred prior to issuance
12 of the Certificates, the General Manager is authorized to apply funds held and allocated by the
13 SFPUC to pay costs of the Projects and, if deemed advisable after consultation with the
14 Director of Public Finance, to reimburse such funds for such expenditures from the proceeds
15 of the Certificates, all subject to Federal tax law and to the laws regarding appropriation of
16 funds under the City Charter.

17 Section 12. General Authority. The Mayor, the City Attorney, the Controller, the City
18 Administrator, the General Manager, the Director of Public Finance, the Clerk of the Board
19 and other officers of the City and their duly authorized deputies and agents are hereby
20 authorized and directed, jointly and severally, to take such actions and to execute and delivery
21 such certificates, agreements, requests or other documents as they may deem necessary or
22 desirable to validate the proposed financing through the execution and delivery of the
23 Certificates, to enter into the Property Leases, Project Leases, the Trust Agreement and the
24 Memorandum of Understanding, to facilitate the execution and delivery of the Certificates and
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1 to obtain bond insurance or other credit enhancements with respect to the financing of the
2 Projects and otherwise to carry out the provisions of this Resolution.

3 Section 13. Modifications, Changes and Additions. The Mayor and the General
4 Manager, as appropriate, are hereby authorized to approve and make such modifications,
5 changes or additions to the Property Leases, the Project Leases or the Trust Agreement,
6 upon consultation with the City Attorney, as may be necessary or desirable in the interests of
7 the City, and which changes do not increase the maximum principal amount or maximum
8 interest rate for the Certificates established pursuant to Section 2 of this Resolution or extend
9 the term of the Property Leases beyond the limit established pursuant to Section 4 of this
10 Resolution. The approval of the General Manager or Mayor, as appropriate, of such
11 modifications, changes or additions shall be conclusively evidenced by the execution and
12 delivery by the Mayor or the General Manager, as appropriate, and the Clerk of the Board of
13 the Property Leases, Project Leases and Trust Agreement.

14 Section 14. Ratification of Prior Actions. All actions authorized and directed by this
15 Resolution and heretofore taken are hereby ratified, approved and confirmed by this Board.

16 Section 15. File Documents. All documents referred to as on file with the Clerk of the
17 Board are in File No. _____.

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19 APPROVED AS TO FORM:

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21 DENNIS J. HERRERA
City Attorney

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24 By: _____
KENNETH DAVID ROUX
Deputy City Attorney

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