

1 [Amendment to Settlement Agreement with Pacific Gas and Electric Company]

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3 **Resolution authorizing the Port to execute an amendment to the settlement agreement**
4 **between Pacific Gas and Electric Company (PG&E) and the City and County of San**
5 **Francisco, dated June 14, 2005, regarding a claim of encroachment by PG&E's Hunter's**
6 **Point Power Plant on Custer, Davidson, India and Ingalls Streets, by: (1) extending**
7 **PG&E's right to continue occupying approximately 35,465 square feet of Custer and**
8 **Davidson Streets until July 31, 2012, and to continue occupying approximately 56,484**
9 **square feet of Custer, Davidson, India and Ingalls Streets until July 31, 2016, with**
10 **option to extend each period of occupancy for periods of 6 months at a time with the**
11 **Port's prior written consent; and (2) delaying the commencement date of a 5-year lease**
12 **to PG&E of approximately 1,421 square feet of Davidson Street from January 1, 2008 to**
13 **August 1, 2012.**

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15 WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority
16 and duty to use, conduct, operate, maintain, manage, regulate and control the lands within
17 Port jurisdiction; and

18 WHEREAS, In April 2001, PG&E filed a voluntary petition for relief under Chapter 11 of
19 the Bankruptcy Code; and

20 WHEREAS, In October 2001, the City filed a bankruptcy claim, which asserted multiple
21 debts and liabilities, including an encroachment claim with respect to PG&E's use of
22 approximately 91,949 square feet of Port property including portions of Davidson, Ingalls,
23 Custer and India Streets for the Hunter's Point Power Plant ("the Plant Property"), for which
24 the Port claimed payment of rent; and

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1 WHEREAS, On July 14, 2005, the Port and PG&E entered into a settlement agreement
2 (“Settlement Agreement”) which among other things settled the encroachment claim and set
3 forth terms and conditions for PG&E’s continued use of the Plant Property until December 31,
4 2007; and

5 WHEREAS, The Settlement Agreement requires the Port to refrain from ejecting PG&E
6 from the Plant Property so long as PG&E’s occupancy is necessary to continue operation of
7 the power plant in accordance with an Independent Systems Operator order, and to complete
8 decommissioning of the plant and for site remediation; and

9 WHEREAS, PG&E represents that it is currently in the process of decommissioning the
10 Hunter’s Point Power Plant, and site remediation of hazardous materials, and that additional
11 time is reasonably necessary in order to complete the project; and

12 WHEREAS, The Settlement Agreement requires the Port to execute a lease with
13 PG&E for a five-year term, with a commencement date effective January 1, 2008, for
14 approximately 1,421 square feet of Davidson Street to be used as an access driveway to
15 PG&E’s switchyard; and

16 WHEREAS, PG&E has requested and Port staff proposes a 4-year extension of the
17 use of approximately 35,465 square feet of the Plant Property consisting of portions of Custer
18 and Davidson Streets (the “Interior Property”) and an 8-year extension of the use of
19 approximately 56,484 square feet of the Plant Property consisting of portions of Custer,
20 Davidson, India and Ingalls Streets (the “Shoreline Property”) in order to facilitate the
21 completion of the decommissioning and site remediation project; and

22 WHEREAS, On December 21, 2007, the Port sent a letter to PG&E as authorized
23 under the Settlement Agreement allowing PG&E the continued use of the Plant Property on a
24 month-to-month basis until July 31, 2008; and

1 WHEREAS, Pursuant to Section 4 of the Settlement Agreement the parties may by
2 mutual agreement further extend the period during which PG&E may occupy the Plant
3 Property for the aforementioned purposes, subject to Board of Supervisors' approval pursuant
4 to Charter Section 9.118; and

5 WHEREAS, Both the Port and PG&E have proposed to amend the Settlement
6 Agreement to: (i) extend PG&E's occupancy of the Port's property, and (ii) postpone the
7 commencement date of a future lease for a portion of Davidson Street until August 1, 2012
8 and by applying the Port's Monthly Rental Rate Schedule, which the Port Commission
9 approves on an annual basis, for Fiscal Year 2012/2013 to the lease; and

10 WHEREAS, A copy of the Settlement Agreement and the proposed amendment to the
11 Settlement Agreement containing the amendments described above (the "Amendment to the
12 Settlement Agreement") is on file with the Secretary of the Port Commission and the Clerk of
13 the Board of Supervisors in file No. _____; and

14 WHEREAS, The Port Commission pursuant to Port Commission Resolution No. 08-52
15 urges the Board of Supervisors to approve the Amendment to the Settlement Agreement; now
16 therefore, be it

17 RESOLVED, That the Board of Supervisors approve the Amendment to the Settlement
18 Agreement that: (1) extends PG&E's right to continue occupying approximately 35,465 square
19 feet of Custer and Davidson Streets until July 31, 2012, and to continue occupying
20 approximately 56,484 square feet of Custer, Davidson, India and Ingalls Streets until July 31,
21 2016, with options to extend the period of occupancy for periods of 6 months at a time with
22 the Port's prior written consent, not to exceed July 31, 2018; and (2) delays the
23 commencement date of the 5-year lease to PG&E of approximately 1,421 square feet of
24 Davidson Street from January 1, 2008 to August 1, 2012; and, be it

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1 FURTHER RESOLVED, That the Executive Director or her designee is hereby
2 authorized to make any additions, amendments or other modifications to the Amendment to
3 the Settlement Agreement that the Executive Director, in consultation with the City Attorney,
4 determines are in the best interest of the City, do not materially increase obligations or
5 liabilities of the City and are necessary or advisable to effectuate the purpose and intent of the
6 amendment.

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