

1 [Trans Bay Cable Project Non-Exclusive Licenses]

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3 **Resolution approving (1) Port Commission License No. 14324, a non-exclusive license**  
4 **for the use of property consisting of approximately 9.4 miles of submerged lands, a**  
5 **small portion of shoreline along 23rd Street, and a portion of 23rd Street to install a 400**  
6 **MW high voltage transmission line, with a term of four years and consideration**  
7 **including license payments to the Port in excess of \$1.26 million and payments to the**  
8 **San Francisco Public Utilities Commission equaling \$3.5 million, and (2) Port**  
9 **Commission License No. 14325, a non-exclusive license for use of the property for**  
10 **operation of the transmission line with a term of twenty-five years with three options to**  
11 **renew for ten (10) years each and one option to renew for seven years and**  
12 **consideration including license payments to the Port in excess of \$1.2 million dollars**  
13 **annually, public benefit payments to Port equaling \$5.5 million and payments to the**  
14 **San Francisco Public Utilities Commission in excess of \$20 million to implement,**  
15 **advance, promote or enhance policies and projects consistent with City Energy**  
16 **Policies, both between Trans Bay Cable LLC and the City and County of San Francisco**  
17 **acting by and through the San Francisco Port Commission and the Mayor’s Office of**  
18 **Economic and Workforce Development.**

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20 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San  
21 Francisco Charter Section B3.581 empower the San Francisco Port Commission with the  
22 power and duty to use, conduct, operate, maintain, manage, regulate and control the lands  
23 within Port Commission jurisdiction; and

24 WHEREAS, Trans Bay Cable LLC("Licensee") proposes to install, operate and  
25 maintain approximately 53 miles of high voltage direct current ("HVDC") PLUS transmission

1 cable bundle of approximately ten (10) inches in diameter (referred to herein as the "cable")  
2 running from the City of Pittsburg to the City and County of San Francisco ("City").  
3 Approximately 9.4 miles of the cable are in submerged lands, a small portion of shoreline  
4 along 23rd Street, and on a portion of 23rd Street that are under Port Commission jurisdiction  
5 (the "License Area"). The HVDC PLUS transmission cable would transmit power from a  
6 converter station in the City of Pittsburg (connected to the Pittsburg Pacific Gas and Electric  
7 (PG&E) Substation) to a converter station in the City which will then convert the DC power to  
8 AC power for delivery to the PG&E Potrero Substation and distribution to City consumers (the  
9 "Trans Bay Cable Project"); and

10 WHEREAS, The Trans Bay Cable Project (1) will augment the electrical transmission  
11 system serving the City to improve reliability and increase capacity, (2) received approval from  
12 the Federal Energy Regulatory Commission of its rate principals in July 2005, and  
13 (3) received approval from the California Independent Systems Operator ("CAISO") as the  
14 long-term reliability and load serving solution that will provide much needed power to the City  
15 to meet its requirements for years to come in September 2005; and

16 WHEREAS, On November 6, 2006, the City of Pittsburg, as lead agency, certified the  
17 Final Environmental Impact Report ("FEIR") for the Trans Bay Cable Project by Resolution  
18 No. 06-10661. The FEIR was supplemented by an addendum published by the City of  
19 Pittsburg on December 26, 2006 ("Addendum"); and

20 WHEREAS, Licensee has applied for an Encroachment Permit from the City and  
21 County of San Francisco Department of Public Works ("DPW Encroachment Permit") to install  
22 portions of the Trans Bay Cable Project within the portions of the City-streets; and  
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1           WHEREAS, The Port Commission's jurisdiction includes lands granted to the City and  
2 County of San Francisco ("City") by the Burton Act, subject to the trust grant, that underlie the  
3 License Area; and

4           WHEREAS, CAISO approved the Project as the preferred long-term transmission  
5 alternative to address the identified electric reliability concerns in San Francisco and northern  
6 San Mateo County beginning in 2012 and supports an earlier date of operation date of 2010.  
7 CAISO expects the Trans Bay Cable Project to be the major new transmission system  
8 upgrade serving the City through 2018 (and perhaps longer); and

9           WHEREAS, The peninsula geography of the City, the location of its major electrical  
10 substations, the retirement of existing generation facilities and subsequent reuse of the land  
11 upon which these facilities are located, and related development activity will frustrate future  
12 transmission system upgrades to the City; and

13           WHEREAS, In-City energy-efficiency, load management and distributed renewable  
14 energy generation projects are the most effective methods of extending the ability of the  
15 electrical transmission grid serving the City (as augmented by the Trans Bay Cable Project)  
16 and are recognized as the preferred policies of the City pursuant to the San Francisco Master  
17 Plan - Energy Element (1981), the San Francisco Electricity Resource Plan (2002), and the  
18 San Francisco Climate Action Plan (2004) (collectively, "City Energy Policies"); and

19           WHEREAS, It is established City policy to impose development exactions and  
20 negotiated public benefits associated with major development projects to further City policies;  
21 and

22           WHEREAS, Each of the development exactions and public benefits imposed in the  
23 Construction License and Operational License is necessary in order to further accomplish the  
24 City Energy Policies; and

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1           WHEREAS, The Port Commission staff in close consultation with the Mayor's Office of  
2 Economic and Workforce Development has negotiated two non-exclusive licenses with  
3 Licensee for use of the License Area during (1) Licensee's construction of the Trans Bay  
4 Cable Project (the "Construction License"), a copy of which is on file with the Clerk of the  
5 Board of Supervisors in File No.070315, which is hereby declared to be a part of this  
6 resolution as if set forth fully herein, and (2) the operational period of the Trans Bay Cable  
7 Project immediately following completion of the construction of the Trans Bay Cable Project  
8 (the "Operational License"; together with the Construction License, the "Licenses"), a copy of  
9 which is on file with the Clerk of the Board of Supervisors in File No.070315, which is hereby  
10 declared to be a part of this resolution as if set forth fully herein; and

11           WHEREAS, Due to the broader energy and electric reliability implications of the Trans  
12 Bay Cable Project, the Mayor's Office of Economic and Workforce Development will be a co-  
13 signatory to the Licenses, acting on behalf of the City and the San Francisco Public Utilities  
14 Commission ("SFPUC"); and

15           WHEREAS, The Construction License shall be for a term of four (4) years, subject to  
16 terms and conditions described in the Construction License and the Operational License shall  
17 be for a term of twenty-five (25) years, with four (4) consecutive options to renew for ten (10)  
18 years for the first three (3) options and seven (7) years for the last option, subject to terms and  
19 conditions described in the Operational License;

20           WHEREAS, In addition to annual license payments to the Port Commission, Licensee  
21 shall pay to Port Five Million Five Hundred Thousand Dollars (\$5,500,000), which payment  
22 will be paid in ten (10) separate installments commencing thirty (30) days following the day  
23 after the Trans Bay Cable Project commences commercial operation as designated by CAISO  
24 (the "Commercial Operating Date") and on or before each of the next nine (9) consecutive  
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1 anniversary dates of the Commercial Operating Date, each equaling Five Hundred Fifty  
2 Thousand Dollars (\$550,000.00) (the "Public Trust Public Benefit Payments");

3 WHEREAS, A portion of the Public Trust Public Benefit Payments (such portion to be  
4 determined by the Port Commission in its sole and absolute discretion) shall be used by the  
5 Port Commission to implement, advance, promote or enhance access along the waterfront,  
6 one of the foundation points to the Waterfront Land Use Plan (and accompanying Waterfront  
7 Design & Access Element), the Port Commission's comprehensive policy document that  
8 guides its balanced management and improvement of its lands. Specifically, a portion of the  
9 Public Trust Public Benefit Payments shall be used to maintain open space for shoreline  
10 areas from Pier 70 to the southern boundary of Port Commission jurisdiction to (i) provide  
11 opportunities for the protection of wildlife and for passive and active recreational uses, (ii)  
12 enhance the public's appreciation of the waterfront by providing greater opportunities for  
13 public access in a manner which does not compromise the efficiency of maritime operations;  
14 and (iii) offset the less-than-significant impact on open space and waterfront access of a new,  
15 long-term industrial use in the vicinity of 23<sup>rd</sup> Street; and

16 WHEREAS, A remaining portion of the Public Trust Public Benefit Payments (such  
17 portion to be determined by the Port Commission in its sole and absolute discretion) shall be  
18 used by the Port Commission to implement, advance, promote or enhance energy efficiency  
19 and renewable energy policies and projects on Port Commission property consistent with City  
20 Energy Policies and Mayor Gavin Newsom's Executive Directive 05-104 on Energy  
21 Conservation; and

22 WHEREAS, Under the provisions of the Construction License, Licensee is required to  
23 pay Three Million Five Hundred Thousand Dollars (\$3,500,000.00) to the SFPUC (the  
24 "Renewable Energy, Transmission and Grid Reliability Payment"), to be paid in thirty-six (36)  
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1 separate installments, each equaling Ninety-Seven Thousand Two Hundred Twenty-Two  
2 Dollars and 22/100 (\$97,222.22), commencing thirty days from the close of construction  
3 financing and monthly thereafter; and

4 WHEREAS, Under the provisions of the Operational License, Licensee is required to  
5 pay Two Million Dollars (\$2,000,000.00) annually subject to increases in the Consumer Price  
6 Index (Base Year: 2010) (the "SF Electric Reliability Payment") to the SFPUC, to be paid in  
7 ten (10) separate installments, commencing thirty (30) days following the Commercial  
8 Operating Date and on or before each of the next nine (9) consecutive anniversary dates of  
9 the Commercial Operating Date; and

10 WHEREAS, The Renewable Energy, Transmission and Grid Reliability Payment and  
11 the SF Electricity Reliability Payment shall be used by the SFPUC to implement, advance,  
12 promote or enhance policies and projects consistent with City Energy Policies; and

13 WHEREAS, The Port Commission on March 13, 2007, by Resolution 07-22, acting as  
14 responsible agency under CEQA, considered the environmental effects of the Trans Bay  
15 Cable Project, as identified by the FEIR and Addendum that relate to the Port Commission's  
16 discretionary actions. The Port Commission made findings on the Trans Bay Cable Project  
17 and its Alternatives and adopted a mitigation monitoring and reporting program; and

18 WHEREAS, The Port Commission on March 13, 2007, by Resolution 07-23, approved  
19 the terms and conditions of the Licenses; and

20 WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors  
21 approval of agreements having a term of ten (10) or more years or having anticipated revenue  
22 to the City of One Million Dollars (\$1,000,000.00) or more; and

23 WHEREAS, The policy of the Board of Supervisors, as set forth in Administrative Code  
24 Section 2.6-1, is to approve only proposed leases involving property or facilities of the City  
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1 that have been awarded to the highest responsible bidders in accordance with the competitive  
2 bidding procedures, except where impractical or impossible; and

3 WHEREAS, The Trans Bay Cable Project will provide power to the City to meet its  
4 requirements for years to come, the terms set forth in the Licenses offer substantial economic  
5 benefits to the Port Commission, and the terms set forth in the Licenses offer substantial  
6 economic means to the Port Commission and the City to implement existing Port Commission  
7 and City policies and directives relating to energy and open space; and

8 WHEREAS, The Trans Bay Cable Project is the only project evaluated by CAISO that  
9 has obtained the regulatory approvals, permits and licenses necessary to construct a  
10 transmission facility to the City and County of San Francisco using Port property and,  
11 therefore, a public competitive bidding process at this time is impractical for a lease  
12 opportunity of this type predominantly for use of the Bay floor; and

13 WHEREAS, The Board of Supervisors on \_\_\_\_\_, 2007, by Resolution No. \_\_\_\_\_  
14 adopted CEQA findings on the Trans Bay Cable Project and a mitigation monitoring and  
15 reporting program, as further described in said resolution; now, therefore, be it

16 RESOLVED, The Trans Bay Cable Project is the only project evaluated by CAISO that  
17 has obtained the regulatory approvals, permits and licenses necessary to construct a  
18 transmission facility to the City and County of San Francisco using Port property and,  
19 therefore, a public competitive bidding process at this time is impractical for a lease  
20 opportunity of this type for use of the Bay floor; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors hereby finds that competitive  
22 bidding for the rights granted under the Licenses is impractical; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors approves the Construction  
24 License (Port Commission License No. 14324) with Trans Bay Cable LLC, a non-exclusive  
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1 license for the use of property consisting of approximately 9.4 miles of submerged lands, a  
2 small portion of shoreline along 23rd Street, and a portion of 23rd Street to install a 400 MW  
3 high voltage transmission line, with a term of four years and consideration including license  
4 payments to the Port in excess of \$1.26 million and payments to the San Francisco Public  
5 Utilities Commission equaling \$3.5 million; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors approves the Operation  
7 License (Port Commission License No. 14325) with Trans Bay Cable LLC, a non-exclusive  
8 license for use of the property for operation of the transmission line with a term of twenty-five  
9 years with three options to renew for ten (10) years each and one option to renew for seven  
10 years and consideration including license payments to the Port in excess of \$1.2 million  
11 dollars annually, public benefit payments to Port equaling \$5.5 million and payments to the  
12 San Francisco Public Utilities Commission in excess of \$20 million to implement, advance,  
13 promote or enhance policies and projects consistent with City Energy Policies; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
15 Director of the Port (the "Executive Director") and the director of the Mayor's Office of  
16 Economic and Workforce Development (the "Director") to execute the Licenses in  
17 substantially the form presented to this Board and in such final form as is approved by the  
18 Executive Director and the Director in consultation with the City Attorney; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
20 Director to enter into any additions, amendments or other modifications to the Licenses that  
21 the Executive Director, in consultation with the City Attorney, determines is in the best  
22 interests of the Port, do not materially increase the obligations or liabilities of the Port or the  
23 City or materially decrease the rent and/or public benefits accruing to the Port and the City,  
24 and are necessary or advisable to complete the transactions which the Licenses contemplate  
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1 and effectuate the purpose and intent of this resolution, such determination to be conclusively  
2 evidenced by the execution and delivery by the Executive Director of the Licenses and any  
3 such amendments to any such Licenses; and, be it

4           FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
5 Director to execute and enter into any additional documents as he or she deems necessary or  
6 appropriate, in consultation with the City Attorney, to consummate the transactions  
7 contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such  
8 determination to be conclusively evidenced by the execution and delivery by the Executive  
9 Director of any such documents; and, be it

10           FURTHER RESOLVED, That the Board of Supervisors approves, confirms, and ratifies  
11 all prior actions taken by the officials, employees and agents of the Port Commission, Mayor's  
12 Office of Economic and Workforce Development, or the City with respect to the Licenses.

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