

1 [Pole Use Agreement]

2  
3 **Resolution approving a non-exclusive agreement for a term of potentially more than**  
4 **ten years between the San Francisco Public Utilities Commission and EarthLink, Inc.**  
5 **granting EarthLink a license to use street light poles owned by the San Francisco**  
6 **Public Utilities Commission to install communications equipment as part of the**  
7 **wireless broadband Internet network EarthLink has agreed to construct to provide free**  
8 **wireless broadband Internet service within the City and County of San Francisco; and**  
9 **making General Plan and environmental findings.**

10  
11 WHEREAS, The San Francisco Public Utilities Commission (“SFPUC”) owns certain  
12 street light poles that are located throughout the City and County of San Francisco; and

13 WHEREAS, On April 20, 2007 EarthLink, Inc. (“EarthLink”) and the City and County of  
14 San Francisco (“City”) entered into an agreement entitled Amended Wireless Broadband  
15 Internet Access Agreement (“Network Agreement”). If approved by the Board of Supervisors  
16 in a separate ordinance, the Network Agreement would enable EarthLink to install, manage,  
17 and operate a wireless broadband Internet (“WiFi”) network within the City and would further  
18 require EarthLink to provide free WiFi service throughout the City; and,

19 WHEREAS, In order to construct the WiFi network and fulfill its other obligations under  
20 the Network Agreement, EarthLink needs to obtain access to street light poles owned by the  
21 SFPUC to install its communications equipment, and

22 WHEREAS, The SFPUC has approved an Agreement with EarthLink for Non-exclusive  
23 Use of Street Light Poles and for Electrical Service within the City and County of San  
24 Francisco (“Pole Use Agreement”), which is on file with the Clerk of the Board in File No.  
25 \_\_\_\_\_ . If approved by the Board of Supervisors herein, the Pole Use Agreement

1 would: (i) grant EarthLink a license to use SFPUC-owned street light poles to install and  
2 maintain communications equipment; (ii) establish all of the terms and conditions related to  
3 such use; and (iii) enable EarthLink to purchase electrical service from the SFPUC to power  
4 the communications equipment; and

5 WHEREAS, The Pole Use Agreement, which is coterminous with the Network  
6 Agreement, would be for an initial term of four years, but could be renewed for three additional  
7 four year terms (a potential term of 16 years); and

8 WHEREAS, On May 8, 2007, in Resolution No. 07-0081 the SFPUC approved the Pole  
9 Use Agreement; and

10 WHEREAS, In a letter dated May 9, 2007, the Planning Department has determined  
11 that the Pole Use Agreement and all the actions contemplated thereunder are consistent with  
12 the priority policies of Section 101.1(b) of the Planning Code and that, on balance, the Pole  
13 Use Agreement is in conformity with the City's General Plan; and

14 WHEREAS, The Planning Department has reviewed the Pole Use Agreement and all  
15 the actions contemplated thereunder in accordance with the California Environmental Quality  
16 Act (California Public Resources Code Section 21000, et seq.) ("CEQA") and determined that  
17 the Pole Use Agreement is categorically exempt from CEQA; now, therefore, be it

18 RESOLVED, That the Board hereby affirms the determination of the Planning  
19 Department that the Pole Use Agreement is consistent with the priority policies of Section  
20 101.1(b) of the Planning Code and is, on balance, in conformity with the City's General Plan,  
21 which determination is on file with the Clerk of the Board of Supervisors in File No. 070077  
22 and which is hereby declared to be a part of this resolution as if set forth fully herein; and be it

23 FURTHER RESOLVED, That the Board hereby affirms the determination of the  
24 Planning Department that the Pole Use Agreement and all the actions contemplated

25

1 thereunder are categorically exempt from CEQA, which determination is on file with the Clerk  
2 of the Board of Supervisors in File No. 070077 and which is hereby declared to be a part of  
3 this resolution as if set forth fully herein; and be it

4 FURTHER RESOLVED, That, pursuant to San Francisco Charter Section 9.118(c), the  
5 Board of Supervisors hereby approves the terms and conditions of the Pole Use Agreement.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25