

1 [Approval of Ground Lease and Acceptance of Easements]

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3 **Resolution approving a ground lease between the City of Hayward, as landlord, and the**
4 **City and County of San Francisco and East Bay Municipal Utility District, as tenants, for**
5 **the construction, use and operation of an emergency pump station/intertie facility at**
6 **the Hayward Executive Airport, authorizing acceptance of two easements related to the**
7 **pump station/intertie facility, and adopting findings pursuant to the California**
8 **Environmental Quality Act.**

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10 WHEREAS, The City and County of San Francisco (“City”), acting by and through its
11 San Francisco Public Utilities Commission (“SFPUC”) and the East Bay Municipal Utility
12 District (“EBMUD”) propose to jointly construct, own, operate, repair and maintain a pumping
13 station/intertie system (“Intertie Facility”) in the City of Hayward to connect their respective
14 water supply systems and to enable the SFPUC and EBMUD to supply water to each other’s
15 systems during times of emergency or during times of extended system shutdowns; and,

16 WHEREAS, The SFPUC and EBMUD propose to jointly lease the premises consisting
17 of approximately 24,974 square feet of land (the "Premises") commonly known as 22488
18 Skywest Drive at the Hayward Executive Airport, in the City of Hayward, under a ground lease
19 (“Lease”) with the City of Hayward (“Hayward”) as Lessor and the SFPUC and EBMUD as co-
20 Lessees. A copy of the proposed Lease is on file with the Clerk of the Board of Supervisors in
21 File No. _____, which is hereby declared to be a part of this resolution as if set forth
22 fully herein; and,

23 WHEREAS, The SFPUC, EBMUD and Hayward have entered into a Joint Exercise of
24 Powers Agreement dated as of April 8, 2003 for the design and construction of the Intertie
25 Facility, as amended by a first amendment dated as of October 18, 2004 (“Construction JPA”),

1 and a Joint Exercise of Powers Agreement dated as of April 8, 2003 for the operation and
2 maintenance of the Intertie Facility (“Operations JPA”), which agreements are attached to the
3 Lease as Exhibits B and C; and,

4 WHEREAS, The SFPUC will receive easement rights for water pipelines into and out of
5 the pumping station, with an easement granted to SFPUC and EBMUD at no cost by Hayward
6 (“Hayward Pipeline Easement”), and an easement granted to SFPUC, EBMUD and Hayward,
7 at a cost of \$6,100 to SFPUC by Brenkwitz Family Interests (R.E.B. & J. M. B. Family
8 Properties, LLC, Lomik Properties, LLC, a California Limited Liability Company, and Bartom
9 Properties, LLC, a California Limited Liability Company (“Brenkwitz Family Pipeline
10 Easement”) (collectively, “Easements”); and

11 WHEREAS, The Director of Property has determined that the payment by SFPUC in
12 the amount of \$6,100 for SFPUC’s interest in the Brenkwitz Family Pipeline Easement and the
13 initial rental amount of \$2,672 per year under the Lease, are fair market values; and,

14 WHEREAS, An Initial Study/Mitigated Negative Declaration (“IS/MND”) has been
15 prepared by Hayward in accordance with the California Environmental Quality Act (“CEQA”), a
16 copy of which is on file with the Clerk of the Board of Supervisors in File No. _____,
17 and it has been determined that said Intertie Facility project would not have a significant
18 adverse impact on the environment after implementation of the mitigation measures; and

19 WHEREAS, Pursuant to resolution no. 04-0164 adopted by the SFPUC at its meeting
20 of September 28, 2004, SFPUC approved the terms and conditions of the Lease, and subject
21 to the approval of the Board of Supervisors, authorized the execution of the Lease and any
22 other documents or memorandum related thereto by the General Manager. A copy of such
23 resolution is on file with the Clerk of the Board of Supervisors in File No. _____;
24 and, now, therefore, be it

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1 RESOLVED, That the Board of Supervisors has reviewed and considered the IS/MND,
2 and based on the prior determination, the Board of Supervisors finds that said Intertie Facility
3 project would not have a significant adverse impact on the environment after implementation
4 of the mitigation measures which have been adopted by the appropriate agency, the SFPUC
5 is not responsible for implementation of any mitigation measures, and the SFPUC shall
6 monitor with Hayward implementation of mitigation measures as provided in the IS/MND; and
7 be it

8 FURTHER RESOLVED, That in accordance with the recommendations of the San
9 Francisco Public Utilities Commission and the Director of Property, the General Manager of
10 Public Utilities and the Director of Property are hereby authorized, on behalf of the City and
11 County of San Francisco, as co-Lessee, to execute the Lease substantially in the form on file
12 with the Clerk of the Board of Supervisors in File No. _____, along with other
13 documents with Hayward and EBMUD, relating to the Intertie Facility; and, be it

14 FURTHER RESOLVED, That the term of the Ground Lease shall be approximately fifty
15 (50) years and shall terminate on December 31, 2054 and that the City's initial share of the
16 rent shall be \$2,672.00 per year, payable annually, subject to adjustments (a) by reappraisal
17 of land value every ten years commencing January 1, 2008 and (b) to a cost of living
18 adjustment every ten years commencing January 1, 2013 in an amount equal to seventy-five
19 (75%) percent of the increase in the Consumer Price Index for the preceding five (5) years,
20 with each such adjustment not to exceed seven (7%) percent per period; and, be it,

21 FURTHER RESOLVED, That the Intertie Facility shall be jointly owned by SFPUC and
22 EBMUD during the term, and SFPUC and EBMUD shall be jointly responsible for payments
23 for costs of construction, maintenance and operation, including costs of utilities and services,
24 for the Premises and Easements, pursuant to the terms and conditions of the Lease,
25 Construction JPA and Operations JPA; and, be it

1 FURTHER RESOLVED, That the Lease includes an obligation by SFPUC to
2 indemnify, defend and hold harmless EBMUD and Hayward, and their respective directors,
3 officers, agents and employees from and against any and all loss, liability, expense, claims,
4 suits, and damages, including attorneys' fees, arising out of or resulting from the negligent
5 acts, errors or omissions, or willful misconduct, by SFPUC, its associates, employees',
6 subconsultants', or agents, in the operation and/or performance under the Lease; and be it

7 FURTHER RESOLVED, That any action taken by any City employee or official with
8 respect to this Lease or the easements is hereby ratified and affirmed; and, be it,

9 FURTHER RESOLVED, That the General Manager of Public Utilities and the Director
10 of Property shall be authorized to enter into any additional amendments or modifications to
11 the Lease, including without limitation, exhibits or improvement specifications, and any
12 documents (including a memorandum of lease or other related documents) that they
13 determine, in consultation with the City Attorney, are in the best interest of the City, do not
14 increase the rent or otherwise materially increase the obligations or liabilities of the City, are
15 necessary or advisable to effectuate the purposes and intent of the Lease or this resolution,
16 and are in compliance with all applicable laws, including City's Charter; and, be it

17 FURTHER RESOLVED, That the City shall have the right to use the Premises in
18 accordance with the Lease for the full Term of the Lease unless funds for the SFPUC's rental
19 payments or other obligations under the Lease are not appropriated in any subsequent fiscal
20 year, or unless the lessee otherwise elects to voluntarily terminate the Lease, at which time
21 the City may terminate the Lease but may be responsible for its share of costs to remove
22 improvements if so requested by Lessor. Said Lease shall be subject to certification as to
23 funds by the Controller, pursuant to Section 6.302 of the City Charter; and be it

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1 FURTHER RESOLVED, That the Director of Property is authorized to accept the two
2 Easements referenced herein, from the City of Hayward and from the Brenkwitz Family
3 Interests.

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RECOMMENDED:

\$ 8,772.00 Available from
Appropriation No. WTR0505
Index Code: 475617 Subobject 05200

General Manager,
Public Utilities Commission
Pursuant to Resolution No. 04-0164

Controller

Director of Property