

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, in the matter of PG&E’s petition for relief under the**  
6 **Bankruptcy Code (Federal ID No. 94-0742640). The settlement resolves a claim of**  
7 **encroachment by PG&E's Hunter's Point Power Plant on Custer, Davidson, India and**  
8 **Ingalls Streets, by: (1) extending PG&E's right to continue occupying approximately**  
9 **35,465 square feet of Custer and Davidson Streets until July 31, 2012, and to continue**  
10 **occupying approximately 56,484 square feet of Custer, Davidson, India and Ingalls**  
11 **Streets until July 31, 2016, with option to extend each period of occupancy for periods**  
12 **of 6 months at a time with the Port's prior written consent; and (2) delaying the**  
13 **commencement date of a 5-year lease to PG&E of approximately 1,421 square feet of**  
14 **Davidson Street from January 1, 2008 to August 1, 2012.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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