

1 [Approving agreements for the development of the City Combustion Turbine Projects at San  
2 Francisco International Airport and at 25<sup>th</sup> and Maryland Streets and adopting environmental  
3 findings.]

4 **Resolution approving agreements necessary for the development of the City**  
5 **Combustion Turbine Projects to be located at North Access Road and Clearwater Drive,**  
6 **San Francisco International Airport, and at Property Adjacent to the MTA Metro East**  
7 **Facility at 25<sup>th</sup> and Maryland Streets in San Francisco, including a design-build**  
8 **agreement and a power purchase agreement; and approving property agreements,**  
9 **including a jurisdictional transfer of property to accommodate the proposed projects,**  
10 **subject to further agreements among the affected City departments; and making**  
11 **environmental findings and findings of consistency with the General Plan and the**  
12 **Priority Policies of Planning Code Section 101.1.**

13

14 **(a) Background.**

15 WHEREAS, In May 2001, the Board of Supervisors adopted Ordinance 124-01,  
16 establishing human health and environment protections applicable to new electric generation  
17 in San Francisco. Among other things, Ordinance 124-01 required the Board of Supervisors  
18 to approve any agreement for or related to new electric generation and required that the San  
19 Francisco Public Utilities Commission (PUC) and Department of the Environment develop an  
20 energy resource plan for submission to the Board of Supervisors; and

21 WHEREAS, In December 2002, the Board of Supervisors unanimously adopted  
22 Resolution 827-02, endorsing the Electricity Resource Plan which provides for closure of the  
23 old, dirty power plants in San Francisco and their replacement with a combination of energy  
24 efficiency, renewable energy, clean distributed generation, transmission upgrades, and  
25 cleaner, more reliable and flexible fossil-fueled resources. The Electricity Resource Plan

1 identifies eight goals that were developed through public comment and used to guide the plan:  
2 maximize energy efficiency, develop renewable power, assure reliable power, support  
3 affordable electric bills, improve air quality and prevent other environmental impacts, support  
4 environmental justice, promote opportunities for economic development, and increase local  
5 control over energy resources; and

6 WHEREAS, In January 2003, the Board of Supervisors adopted Ordinance 1-03,  
7 approving a settlement with the Williams Energy Companies. As part of this settlement, the  
8 City took ownership of four combustion turbines (CTs), which could be developed into small  
9 power plants. The Board of Supervisors also approved Resolution 830-02, approving a  
10 contract with the California Department of Water Resources (CDWR) under which the State  
11 would purchase the electricity generated by the power plants. As part of the settlement, the  
12 City entered into an Implementation Agreement with the California Attorney General, the  
13 California Consumer Power and Conservation Financing Authority (CPA) and CDWR.  
14 Pursuant to the Implementation Agreement, the City received the CTs transferred to the State  
15 by Williams for the purpose of developing, constructing and operating electric generating  
16 facilities in the City. The Implementation Agreement also provided funding for the City's costs  
17 of developing the projects; and

18 WHEREAS, In November 2004, the Governing Board of the California Independent  
19 System Operator (ISO) adopted the San Francisco Action Plan (ISO Action Plan) which  
20 detailed the need for the four CTs and a number of transmission projects to displace the  
21 reliability need for the Hunters Point Power Plant and the Potrero Power Plant. The ISO  
22 Action Plan is on file with the Clerk of the Board of Supervisors in File No.\_\_\_\_\_, and is hereby  
23 declared to be a part of this resolution as if set forth fully herein; and

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1           WHEREAS, The ISO Action Plan identified fifteen projects needed to permit the  
2 closure of the old power plants in the City, and in March 2007, the ISO identified an additional  
3 transmission project, the Martin-Hunters Point Cable, which was necessary for the closure of  
4 the Potrero Power Plant. In recent communications with the City, such as those on May 1,  
5 2008, April 8, 2008, January 28, 2008, October 19, 2007, and July 12, 2007, the ISO has  
6 continued to require compliance with the ISO Action Plan in order to replace the reliability  
7 need for the Potrero Power Plant; and

8           WHEREAS, The projects required for the shut down of the Hunters Point Power Plant  
9 have been completed and in May 2006, the Hunters Point Power Plant was permanently  
10 closed; and

11           WHEREAS, Most of the remaining transmission projects identified in the ISO Action  
12 Plan have been completed or are close to completion, such that when the City's CT Projects  
13 are operational, Potrero Unit 3 will no longer be needed for reliability. Thereafter, completion  
14 of any remaining transmission projects identified in the ISO Action Plan and the new Martin-  
15 Hunters Point cable will allow for closure of Potrero Units 4, 5, and 6; and

16           WHEREAS, The Potrero Power Plant cannot be relied on to ensure reliability beyond  
17 2008 because the water discharge permit for Potrero Unit 3 expires on December 31, 2008,  
18 and the Regional Water Quality Control Board has stated its intention to deny further permit  
19 extensions unless Mirant upgrades the plant's cooling technology or shows that the Bay is not  
20 harmed by the plant's discharges. (Order Number: R2-2006-0032, NPDES Permit No.  
21 CA0005657, May 10, 2006;) and

22           WHEREAS, On October 30, 2007 the City and Mirant executed a term sheet under  
23 which Mirant would close the existing Potrero Power Plant when it is no longer needed for  
24 reliability, subject to assistance from the City in redeveloping the site. The term sheet is on  
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1 file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is hereby declared to  
2 be a part of this resolution as if set forth fully herein; and

3 **(b) Development of the City's Combustion Turbine Project.**

4 WHEREAS, Pursuant to Ordinance 1-03 and Resolution 830-02, the PUC proceeded  
5 with development of the four CTs. The PUC held numerous community meetings to discuss  
6 the City's CT Projects and modified the location, scope, and design of the projects in  
7 response to community concerns. The PUC has reviewed the City CT Projects in numerous  
8 Commission meetings, and public hearings, including most recently meetings on July 24,  
9 2007, October 19, 2007, October 23, 2007, and October 31, 2007. The PUC adopted  
10 Resolution 07-0188 on October 31, 2007, authorizing the completion of negotiations and the  
11 execution of agreements relating to the development of the City CT Projects; and

12 WHEREAS, Since its initial approval of the Williams Settlement, the Board of  
13 Supervisors has held a number of public hearings to discuss the development of the City's CT  
14 Projects, including, most recently, hearings in the Land Use Committee on October 29, 2007  
15 and January 28, 2008. The Board of Supervisors adopted Resolution 617-07, supporting the  
16 development of the City CT Projects, on October 30, 2007; and

17 WHEREAS, As required by state law, the City submitted an Application for  
18 Certification (AFC) for the CT project to be located at 25<sup>th</sup> and Maryland Streets (the Potrero  
19 CT Project, also known as the San Francisco Electrical Reliability Project) to the California  
20 Energy Commission (CEC), the state agency charged with licensing thermal power plants  
21 larger than 50 megawatts (MW). Over a two-year period, the CEC conducted a public review  
22 of the project, including a number of public workshops and public evidentiary hearings in San  
23 Francisco and Sacramento. In addition to the PUC, a number of other City departments  
24 participated in the CEC and public review process. The City's witnesses included experts from  
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1 the PUC and the Department of Environment. The Departments of Environment, Planning,  
2 Public Health and the Port provided input into the City submittals to the CEC. The CEC's  
3 expert staff conducted an independent analysis of the City's proposed project and submitted a  
4 detailed report in February 2006. This independent analysis, called a Final Staff Assessment,  
5 is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is hereby declared  
6 to be a part of this resolution as if set forth fully herein. The CEC approved the City's AFC on  
7 October 3, 2006. The CEC decision was appealed to the California Supreme Court. The  
8 Supreme Court denied the appeal in February 2007; and

9 WHEREAS, The CT project to be located at the Airport (Airport CT Project) was  
10 reviewed by the Planning Department during a two and one-half year process. The Planning  
11 Department issued a Final Mitigated Negative Declaration for the Airport CT Project on  
12 January 12, 2007; and

13 WHEREAS, The PUC issued two requests for proposals for a design-build agreement  
14 to construct the City CT Projects and received no compliant bids. (DB-108, on February 9,  
15 2006 and DB-108-R on August 10, 2006.) The PUC continued its efforts to develop the City  
16 CT Projects considering a variety of alternatives for construction of the projects; and

17 WHEREAS, On July 12, 2007, the Power Plant Task Force adopted a resolution  
18 recommending approval of the City CT Projects by the Board of Supervisors; this resolution is  
19 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is hereby declared to  
20 be a part of this resolution as if set forth fully herein; and

21 WHEREAS, On May 1, 2008, the Power Plant Task Force adopted a resolution again  
22 recommending approval by the Board of Supervisors of the City CT Projects;

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1           **(c) Description of the City CT Projects.**

2           WHEREAS, The City CT Projects consist of (i) the Potrero CT Project, a three CT  
3 facility with a combined output of 145 MW located adjacent to the MTA Metro East Facility in  
4 San Francisco at 25<sup>th</sup> and Maryland Streets and (ii) the Airport CT Project, a one CT facility  
5 with an output of 48 MW located at the San Francisco International Airport at North Access  
6 Road and Clearwater Drive; and

7           WHEREAS, The City will finance, construct, own and operate the City CT Projects.  
8 Through 2015, the City will sell the electricity generated by the projects to the California  
9 Department of Water Resources who will use the electricity to ensure reliable service to utility  
10 ratepayers, including those in San Francisco; and

11           WHEREAS, The PUC has reached agreement with Industrial Construction Company,  
12 Inc., (ICC) to design and construct the City CT Projects. The PUC will contract with site  
13 representatives and inspectors experienced in electric plant construction to oversee and  
14 monitor construction of the projects. The PUC will contract with General Electric to upgrade,  
15 test, and transport the CT generators. The PUC will contract with PG&E to design and  
16 construct facilities to interconnect the City CT Projects to the electric grid. The City will  
17 contract with an experienced firm to operate and maintain the City CT Projects once they are  
18 constructed; and

19           WHEREAS, The estimated cost to the City of this project is \$ 238,442,360, which  
20 consists of \$15,858,202 in Phase 1, a four-month design and procurement phase, and  
21 \$222,584,158 in Phase 2, an eighteen-month full construction phase. The \$222,584,158  
22 construction cost consists of \$146,102,634 for the Potrero CT Project and \$76,481,524 for the  
23 Airport CT Project; and

1           WHEREAS, Concurrent with this resolution, the PUC has submitted to the Board of  
2 Supervisors a resolution (the Financing Resolution) approving a financing package for the  
3 execution and delivery of certificates of participation in an amount sufficient to finance the City  
4 CT Projects and related contracting documents, as well as a Memorandum of Understanding  
5 between PUC and the Director of Public Finance setting forth the obligation of PUC to include  
6 payments of debt service in its annual budget. See Section (i), below; and

7           WHEREAS, The Potrero CT Project will connect to the power grid through the PG&E  
8 Potrero Substation. Natural gas will be delivered through the existing natural gas  
9 transmission line located at Illinois and 25<sup>th</sup> Streets. The Airport CT Project will connect with  
10 the PG&E electrical transmission system and the Airport's electrical system. In an emergency  
11 that disables the power grid, the Airport CT Project can by-pass the PG&E transmission  
12 system and provide power directly to the Airport. Natural gas for the Airport CT Project will be  
13 provided from the existing natural gas pipeline west of South Airport Boulevard; and

14           WHEREAS, The City CT Projects will employ the best available technology (BACT) to  
15 control emissions of criteria pollutants. In addition: (a) the emissions increases of precursor  
16 organic compounds from the Potrero CT and oxides of nitrogen (NOx) from both City CT  
17 Projects will be mitigated by the purchase of emission reduction credits from offset holders  
18 within San Francisco or from credits held by the Bay Area Air Quality Management District;  
19 and (b) the Potrero CT Project's particulate emissions will be mitigated to a level of less than  
20 significant by the implementation of a local high efficiency street sweeping program. The local  
21 street sweeping program will target ground-level sources of emissions that contain higher  
22 concentrations of hazardous materials than the particulate matter emitted from the Potrero CT  
23 Project and will address pollution at nose level where impacts are most severe; and (c) the

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1 Potrero CT Project will implement a community benefits package that includes tree planting,  
2 asthma education, and indoor air quality mitigation; and

3 WHEREAS, The City CT Projects require water for cooling towers, NOx emission  
4 control and other processes. The Potrero CT Project will use only recycled water. After use  
5 at the power plant, the water will be returned to the combined sewer system rather than being  
6 discharged into the Bay. Stormwater runoff from the Potrero CT Project site will be routed into  
7 a vegetated swale that will treat the surface runoff prior to discharge into the Bay. The Airport  
8 CT Project will be equipped with dual plumbing to allow for use of recycled water when it  
9 becomes available; and

10 **(d) Objectives and benefits of the City CT Projects.**

11 WHEREAS, The City CT Projects will result in the shutdown of older, more polluting  
12 in-City power plants, as required in the City's adopted Electricity Resource Plan, and  
13 supported by the ISO Action Plan; and

14 WHEREAS, The City CT Projects will be equipped with the best available pollution  
15 control technology. Replacing older more polluting in-City generating units with these new  
16 units will improve air quality. Local air emissions will be further reduced by the  
17 comprehensive air quality mitigation program that is a condition of the CEC license and the  
18 community benefit package that the City has developed. The City has also purchased local  
19 emission offsets for NOx emissions from the Potrero CT Project; and

20 WHEREAS, The City CT Projects will provide firm electric generation on the San  
21 Francisco peninsula. CAISO studies show a need for local generating capacity to provide  
22 greater system reliability and operational flexibility. The quick starting capability of the CT  
23 technology allows for a fast response to electrical system load needs. This capability allows  
24 units to be shut off when not needed, reducing fuel consumption and emissions. This is a  
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1 distinct advantage over Potrero Power Plant Unit 3, which must run continuously at low levels  
2 even when the electricity is not needed in order to be available when needed; and

3 WHEREAS, City ownership of electric generating supplies can reduce the risk of  
4 market power abuses and enable the City to mandate the use of cleaner fuels when feasible  
5 or to close down any such generation when it is no longer needed; and

6 WHEREAS, The City CT Projects will assist the City with meeting regulatory  
7 requirements designed to ensure adequate electric supply. Federal and state regulations  
8 require electric utilities, including the City, to have available a specified amount of electricity  
9 based on the total electric load they are serving. Further, a percentage of this supply of  
10 electricity must be available within constrained locations such as San Francisco. If the City  
11 begins serving any additional customers pursuant to Community Choice Aggregation, the  
12 amount of supply that is required of the City will increase; and

13 WHEREAS, The City CT Projects will eliminate power plant water discharge into the  
14 Bay from the San Francisco waterfront. The existing Potrero Power Plant uses 226 million  
15 gallons of bay water each day to cool the plant, sucking in and killing hundreds of millions of  
16 larval fish and organisms each year. The Bay ecosystem is impacted by this loss of aquatic  
17 life and habitat. The water discharged from the Potrero Power Plant into the Bay includes  
18 numerous harmful pollutants, including copper, mercury, dioxins and PCBs. This heated,  
19 polluted water is discharged back into the Bay in shallow water where there is inadequate  
20 dilution of the chemicals. This shallow water discharge also stirs up polluted sediments and  
21 redistributes them into the Bay. This poses a serious risk to residents who rely on  
22 subsistence fishing in this area. For these reasons, the City has worked for many years to rid  
23 the Bay of the outdated technology utilized by the Potrero Power Plant. See for example  
24 Board of Supervisors Resolution Nos. 254-06 and 84-05; and

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1           WHEREAS, The City CT Projects are operationally flexible and ideally suited to  
2 complement the City's aggressive goals for the deployment of renewable resources. The ISO  
3 has indicated an increasing need for such flexible power plants with the increased  
4 development of renewable energy resources in the state. See, for example, the ISO's report  
5 *Integration of Renewable Resources*, dated November 2007, especially page 8, items 11 and  
6 12. <http://www.caiso.com/1ca5/1ca5a7a026270.pdf> ; and

7           WHEREAS, The City CT Projects use newer technology with a proven record of  
8 reliability in contrast with the Potrero Power Plant, which has had an outage rate well above  
9 the system average for power plants operating within California; and

10           WHEREAS, The Airport CT Project will provide emergency backup power to the  
11 Airport in the event of electric system emergencies. This provides economic and security  
12 benefits to the City and the region; and

13           **(e) Environmental Review and Findings.**

14           WHEREAS, On October 3, 2006, in Order No. 06-1003-01, in Docket No. 04-AFC-11,  
15 the CEC approved the application for certification of the Potrero CT Project, subject to the  
16 conditions of certification in the Final CEC Decision (the CEC Order and Final CEC Decision  
17 are referred to herein as the "CEC Decision"). The Potrero CT Project and its related facilities  
18 are subject to CEC licensing jurisdiction. (Pub. Resources Code § 25500 et seq.) During  
19 licensing proceedings, the CEC acts as lead agency under CEQA (Pub. Resources Code §  
20 25519(c) and § 21000 et seq.) As authorized by CEQA, the CEC's regulatory process,  
21 including the evidentiary record and associated analyses, is the functional equivalent to the  
22 preparation of an Environmental Impact Report ("EIR"). (Pub. Resources Code § 21080.5  
23 and §§ 15250 to 15253; § 15251(j).) The full text of the CEC Decision and CEC Order are on  
24 file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and are incorporated herein  
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1 by reference. The CEC found that the Potrero CT Project would result in no significant  
2 environmental impacts. The Board of Supervisors has reviewed and considered the CEC  
3 Decision and CEC Order in exercising its independent judgment over approval of the Potrero  
4 CT Project; and

5 WHEREAS, On January 12, 2007, the City Planning Department issued a Final  
6 Mitigated Negative Declaration (Final MND) for the Airport CT Project. The City Planning  
7 Department found that, with mitigation, the project would not have a significant effect on the  
8 environment. A copy of the Final MND is on file with the Clerk of the Board of Supervisors in  
9 File No. \_\_\_\_\_ and is incorporated herein by reference. The Board of Supervisors has  
10 reviewed and considered the Final MND in exercising its independent judgment over approval  
11 of the Airport CT Project; and

12 WHEREAS, On October 31, 2007, the PUC adopted Resolution 07-0188 authorizing  
13 the PUC General Manager to complete negotiations and execute agreements related to  
14 developing the City CT Projects. Pursuant to the California Environmental Quality Act  
15 (CEQA) (Pub. Resources Code §§ 21000 et seq.), the PUC adopted environmental findings in  
16 Resolution 07-0188 for the Potrero CT Project and Airport CT Project. The CEQA Findings  
17 set forth in Resolution 07-0188, including attachments and exhibits (referred to herein as "07-  
18 188 CEQA Findings"), include extensive CEQA findings regarding the City CT Projects'  
19 potential environmental impacts, the sufficiency of mitigation measures, responsibility for  
20 implementation of mitigation measures including mitigation and monitoring reports for each  
21 City CT Project, as well as additional CEQA findings including, but not limited to, findings  
22 pursuant to Sections 15162, 15252, and 15253 of the CEQA Guidelines (Cal. Code of  
23 Regulations, Title 14, Ch. 3, §§ 15000 et seq.). The 07-188 CEQA Findings are on file with

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1 the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and are incorporated herein by  
2 reference; and

3 WHEREAS, On the basis of the 07-0188 CEQA Findings, the PUC determined the  
4 City CT Projects will have no significant effect on the environment and approved the  
5 Resolution. On November 7, 2007, the PUC filed Notices of Determination for the City CT  
6 Projects in accordance with Public Resources Code Section 21152, copies of which are on file  
7 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and incorporated herein by  
8 reference; and

9 **(f) Design-Build Agreement.**

10 WHEREAS, The PUC has negotiated an agreement with Industrial Construction  
11 Company, Inc. (ICC) under which ICC will design and build the City CT Projects. This  
12 proposed agreement is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_  
13 and is incorporated herein by reference; and

14 WHEREAS, The agreement with ICC is consistent with design-build agreements  
15 typically entered into by the City. The key terms of this agreement include the following:

16 (1) ICC will design and build the City CT Projects consistent with the  
17 schedule and specifications contained in the contract documents and turn the projects over to  
18 the City in fully functional and operational condition.

19 (2) Under the agreement with ICC, the City CT Projects will be completed no  
20 later than 24 months after the initial notice to proceed.

21 (3) Contract Sum. The total contract sum will be \$155,459,247. The City will  
22 pay ICC based on milestone payments as shown in the contract documents. The contract  
23 sum includes \$99,945,547 for the Potrero CT Project and \$55,513,700 for the Airport CT  
24 Project.

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1           (4)     Incentives, Liquidated Damages. The agreement with ICC provides for  
2 several incentives and liquidated damages, including the following key provisions:

3           (A)     ICC will pay the City \$80,000 per calendar day in liquidated  
4 damages for delay in completion of the projects as specified in the contract. The amount of  
5 liquidated damages for delay and performance guarantees under the contract will not exceed  
6 twenty-five percent (25%) of the total contract price, or approximately \$39 million.

7           (B)     City will pay ICC a bonus of \$40,000 per calendar day for early  
8 completion of the projects as specified in the contract. This bonus will not exceed ten percent  
9 (10%) of the total contract price.

10          (5)     Security for Design-Build Agreement. ICC will furnish performance and  
11 payment bonds, each with a penal sum in the full contract amount, secured by two personal  
12 sureties. These personal surety bonds are authorized under sections 3247 and 3248 of the  
13 California Civil Code and satisfy the requirements of Administrative Code section 6.22(A).  
14 The personal sureties will provide the City with irrevocable trust receipts issued by an  
15 authorized trustee acceptable to the City for the full penal sum of the bonds.

16          (6)     City Contracting Requirements.

17          (A)     Article 9 of the ICC contract states that the contract is subject to all  
18 applicable provisions of the City's Charter and Administrative Code. In addition, Chapter 6 of  
19 the Administrative Code: Public Works Contracting Policies And Procedures, is incorporated  
20 by reference in its entirety by Article 9.

21          (B)     The ICC contract includes the following required provisions: Noise  
22 Control Ordinance, Industrial Waste Ordinance, Resource Efficiency Requirements and Green  
23 Building Standards, Resource Conservation Ordinance, CityBuild/First Source Hiring,  
24 Disadvantaged Business Enterprise Ordinance and Subcontracting Goals, Nondiscrimination  
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1 in Contracts and Benefits, Prevailing Wage Requirements, False Claims Act, Tropical  
2 Hardwood and Virgin Redwood Products Ban, Nondisclosure of Private Information, and  
3 Prohibition on Using Funds for Political Activity; and

4 **(g) Amended and Restated Power Purchase Agreement.**

5 WHEREAS, In Resolution 830-02, the Board of Supervisors approved a power  
6 purchase agreement (PPA) with the California Department of Water Resources (CDWR)  
7 under which CDWR agreed to purchase the electricity generated by the City CT Projects. The  
8 PUC has worked with CDWR to amend the PPA to reflect changes in operational  
9 requirements and in the regulatory environment since the original agreement was adopted.  
10 The PUC and CDWR continue to finalize the details of this agreement; and

11 WHEREAS, The key terms of the Amended and Restated PPA are as follows:

12 (1) Price for capacity. \$171 kW-year (may be shaped monthly to reflect  
13 value of capacity at different times of the year). In addition, a price to cover variable operation  
14 and maintenance, escalated annually at CPI over the term.

15 (2) Fuel. Procured by CDWR.

16 (3) Term of payments. Commercial operation date through December 31,  
17 2015.

18 (4) Output. CDWR will be entitled to 100% of the output of the facilities and  
19 to direct their operation, except during a system emergency that precludes delivery of  
20 electricity from the Airport CT Project to the electric transmission system.

21 (5) Backup power to the Airport. During a system emergency that precludes  
22 delivery of electricity from the Airport CT Project to the electric transmission system, the City  
23 may use the Airport CT Project to provide back up power to the Airport.

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1           (6)     Commercial operation of the City CT Projects. If one facility achieves  
2 commercial operation before the other, it will receive a pro-rata capacity payment based on  
3 the rated capacity of the facility. If the second facility does not achieve commercial operation  
4 within six months, CDWR may cease making capacity payments to the City for the first facility  
5 until the second facility achieves commercial operation. The City is not obligated to operate  
6 either facility if CDWR ceases to make capacity payments.

7           (7)     Guarantees of Performance. City must meet certain performance  
8 requirements or be subject to damages consistent with industry standards for Availability,  
9 Heat Rate, and Starting Reliability.

10          (8)     Novation. CDWR may require the City to enter into a replacement  
11 agreement with terms identical to the PPA, except those relating to CDWR's status as a  
12 governmental entity, provided that such replacement agreement may not jeopardize the City's  
13 tax exempt financing.

14          (9)     Termination Rights.

15                 (A)     City may terminate at any time prior to the commercial operation  
16 date if the financial risk of continuing with the development and construction of the facilities  
17 becomes unacceptable.

18                 (B)     CDWR may terminate if the City fails to meet reasonable deadlines  
19 to commence construction and achieve commercial operation.

20                 (C)     CDWR may terminate if the facilities, considered together, fail to  
21 achieve a weighted average monthly availability of 60% for any two consecutive six-month  
22 periods; and

23           WHEREAS, The PUC anticipates that additional minor amendments to the Amended  
24 and Restated PPA may be required in order to execute a final agreement with CDWR; and

1           **(h) Compliance with Other City Requirements.**

2           WHEREAS, In Ordinance 124-01, the Board of Supervisors adopted human health  
3 and environment protections applicable to new electric generation in San Francisco. Section  
4 3 of that ordinance required Board of Supervisors approval for any agreement for or related to  
5 new electric generation; and

6           WHEREAS, The requirements of Administrative Code Chapter 29 regarding fiscal  
7 feasibility do not apply to the City CT Projects for two independent reasons. First, the City CT  
8 Projects are exempt from those requirements under Section 29.1(c)(2) because the Board of  
9 Supervisors approved the City's acceptance of the CTs and obligations to pursue project  
10 development as part of the settlement of the Williams litigation under Ordinance No.1-03, in  
11 File No. 021893 and Resolution 830-02, in File No. 021916. Second, the CT Projects are  
12 exempt under Section 29.1(c)(4) because the CT Projects are utility capital improvement  
13 projects under the jurisdiction of the PUC; and

14           **(i) Companion Legislation Regarding Financing.**

15           WHEREAS, The Financing Resolution identified in Section (c), above, has been  
16 submitted concurrently herewith and is an integral part of the transactions contemplated under  
17 this Resolution; and

18           WHEREAS, A Memorandum of Understanding between the PUC and the Director of  
19 Public Finance as to the budgeting and payment of debt service by the PUC is on file with the  
20 Clerk of the Board of Supervisors in File No. 080524 and incorporated herein by reference;  
21 and

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1           **(j)     Agreements for Land Use Between City Departments and Lease**

2     **Modification.**

3           WHEREAS, The Potrero CT Project will be located on City-owned property at 25<sup>th</sup> and  
4     Maryland Streets in San Francisco. The Airport CT Project will be located on City-owned  
5     property at the corner of North Access Road and Clearwater Drive (SFIA Plot 20) at the  
6     Airport. Agreements for the use of these properties will be finalized by the affected City  
7     departments and approved by their respective Commissions, as required; and

8           WHEREAS, The Potrero CT Project will be located at a 4-acre site at the corner of  
9     25<sup>th</sup> and Maryland Streets in the City, as shown in the maps on file with the Clerk of the Board  
10    in File No. \_\_\_\_\_ (the "Potrero Site"). The Potrero Site is currently under the jurisdiction of  
11    the City's Port Commission but occupied by the Municipal Transportation Agency (MTA) in  
12    perpetuity under the terms of Memorandum of Understanding No. M-12654, dated as of  
13    January 25, 2001, between the Port Commission and the MTA (the "Existing Potrero MOU");  
14    and

15          WHEREAS, Staff from the Port Commission, the MTA and the PUC have engaged in  
16    negotiations of a Memorandum of Understanding (the "New Potrero MOU") providing for the  
17    transfer of jurisdiction over the Potrero Site to the PUC, or in the alternative, for a long-term  
18    lease of the Potrero Site for the life of the Potrero CT Project, for purposes of financing,  
19    constructing and operating the Potrero CT Project, as well as matters relating to the MTA's  
20    Metro East project adjoining the Potrero Site and other issues stemming from the transactions  
21    contemplated under the Existing Potrero MOU. Under the New Potrero MOU, the PUC would  
22    pay the fair market value of the Potrero Site as confirmed by the City's Director of Property, or  
23    approximately \$9 million to the MTA for a jurisdictional transfer (or a fair market rent based  
24    upon this appraised value under a long-term lease), and the Port would consent to the  
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1 jurisdictional transfer or lease in consideration of a trust option and a potential trust exchange  
2 as more particularly set forth in the New Potrero MOU; and

3 WHEREAS, The effectiveness of the New Potrero MOU is conditioned upon the  
4 approval of each of the Port Commission, the MTA Board of Directors and the PUC, each in  
5 their sole discretion, along with this Board's approval of the jurisdictional transfer of the  
6 Potrero Site from the Port to the PUC, or in the alternative, of a long-term lease of the Potrero  
7 Site for the life of the Potrero CT Project; and

8 WHEREAS, The Airport CT Project is to be located on certain premises owned by the  
9 City at San Francisco International Airport as shown in the maps on file with the Clerk of the  
10 Board in File No. \_\_\_\_\_ (the "Airport Site"). The Airport Site includes a 2-acre parcel  
11 located at the corner of North Access Road and Clearwater Drive that is to be used for the  
12 plant itself as well as a portion of land currently leased by United Airlines ("United") that is to  
13 be used for interconnection facilities. All components of the Airport Site are under the  
14 jurisdiction of the City's Airport Commission; and

15 WHEREAS, Staff from the Airport Commission and the PUC have engaged in  
16 negotiations of a Memorandum of Understanding (the "New Airport MOU") providing for the  
17 lease of the Airport Site to the PUC for a period of 30 years for purposes of financing,  
18 constructing and operating the Airport CT Project, as well as matters relating to the payment  
19 of fair market rents to the Airport and the construction and operation of the Airport CT Project.  
20 The New Airport MOU also addresses the modification of the United lease to accommodate  
21 the use of the Airport Site by the PUC for the Airport CT Project. The Airport has the right to  
22 pursue such a modification under an existing agreement with United; and

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1           WHEREAS, The effectiveness of the New Airport MOU is conditioned upon the  
2 approval of the Airport Commission and the PUC Commission, along with this Board's  
3 approval of the Airport Commission's modification of the United leasehold; and

4           WHEREAS, The Airport Site and the Potrero Site can be more advantageously used  
5 by the PUC for the CT Project, and through the extensive public review process and the  
6 Commission approvals described above, the proposed property agreements for the CT  
7 projects, including the jurisdictional transfer or long-term lease of the Potrero Site, have  
8 complied with the substantive requirements of Administrative Code Chapter 23; and

9           **(k) General Plan Conformity.**

10          WHEREAS, The Planning Department has reviewed the Potrero CT Project and found  
11 that it is consistent with the City's General Plan and with the priority policies in Planning Code  
12 Section 101.1. The Planning Department's review and findings are on file with the Clerk of the  
13 Board of Supervisors in File No. \_\_\_\_\_ and incorporated herein by reference; and;

14          WHEREAS, The Planning Department has reviewed the Airport CT Project and found  
15 that it is consistent with the City's General Plan and with the priority policies in Planning Code  
16 Section 101.1. The Planning Department's review and findings are on file with the Clerk of the  
17 Board of Supervisors in File No. \_\_\_\_\_ and incorporated herein by reference; and

18           **(l) Alternative Fuels.**

19          WHEREAS, The City is committed to aggressively developing additional renewable  
20 sources of energy as described in Resolution 827-02 and the City's Electricity Resource Plan;  
21 and

22          WHEREAS, The City should explore the feasibility of using renewable fuels to power  
23 some or all of the City's CT units and should consider the impacts of using renewable fuels on  
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1 the reliability, security and economic benefits of the City CT Projects, as well as other relevant  
2 information; and

3 **(m) Modification of Project Scope.**

4 WHEREAS, The primary goal of construction of the City CT Projects is to secure the  
5 closure of the Potrero Power Plant on the most expeditious basis available. Under the Mirant  
6 term sheet, the removal by the ISO of the Potrero Power Plant's reliability status is the key  
7 condition for the closure of the plant. As described above, the ISO has reiterated its stance  
8 that the successful completion and commercial operation of both the Potrero CT Project and  
9 the Airport CT Project are necessary to replace the reliability need for the Potrero Power  
10 Plant; and

11 WHEREAS, The agreement with ICC for the construction of the City CT Projects  
12 contemplates two phases: a first phase of approximately four months of preliminary work and  
13 equipment ordering, and then a second phase encompassing a full notice to proceed on the  
14 projects as a whole; and

15 WHEREAS, If the City receives written confirmation from the ISO after the approval of  
16 this Resolution but prior to the issuance of the full notice to proceed under Phase 2 of the ICC  
17 contract that 3 or fewer of the City's combustion turbines will be sufficient to replace the  
18 reliability need for the Potrero Power Plant then the PUC should take steps to modify the  
19 scope of the City CT Projects; now, therefore, be it

20 RESOLVED, That based on the record as a whole, the Board of Supervisors finds that  
21 construction and operation of the Potrero CT Project as authorized by this Resolution will not  
22 alter the project as described in the CEC Decision. The PUC shall require that construction of  
23 the Potrero CT comply with all the technical requirements set forth in the City's August 9,  
24 2006, Request for Proposals for design and build of the City CT Projects. The site, the  
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1 technical requirements, planned operations, and environmental impacts of the City CT  
2 Projects remain unchanged; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors finds that based on substantial  
4 evidence and in light of the whole record: (1) no substantial changes have occurred in the  
5 Potrero CT Project proposed for approval under this Resolution that will require revisions in  
6 the CEC Decision due to the involvement of new significant environmental effects or a  
7 substantial increase in the severity of previously identified significant effects; (2) no substantial  
8 changes have occurred with respect to the circumstances under which the Potrero CT Project  
9 is undertaken which would require major revisions to the CEC Decision due to the  
10 involvement of new significant environmental effects, or a substantial increase in the severity  
11 of effects identified in the CEC Decision; and (3) no new information of substantial importance  
12 to the Project has become available which would indicate (a) the Potrero CT Project will have  
13 significant effects not discussed in the CEC Decision, (b) significant environmental effects will  
14 be substantially more severe; (c) mitigation measures or alternatives found not feasible which  
15 would reduce one or more significant effects have become feasible; or (d) mitigation  
16 measures or alternatives which are considerably different from those in the CEC Decision  
17 would substantially reduce one or more significant effects on the environment; and be it

18 FURTHER RESOLVED, That based on the foregoing and in light of the whole record,  
19 the Board of Supervisors finds that the 07-0188 CEQA Findings remain applicable to the  
20 Potrero CT Project, and the Board therefore adopts the 07-0188 CEQA Findings as its own  
21 and incorporates them herein by reference. The Board in its independent judgment, finds that  
22 all significant environmental impacts will be mitigated through adoption of mitigation measures  
23 contained in the Mitigation Monitoring and Reporting Program ("MMRP") attached as Exhibit 1  
24 to Attachment B of the 07-0188 CEQA Findings and incorporated by reference herein. The  
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1 Board has reviewed and considered the entire record, including the CEC Decision, and  
2 hereby adopts the Potrero CT MMRP; and, be it

3 FURTHER RESOLVED, That based on the record as a whole, the Board of  
4 Supervisors finds that construction and operation of the Airport CT Project as authorized by  
5 this Resolution will not alter the project as described and analyzed in the Final MND. The  
6 construction of the Airport CT Project must be of a utility grade and comply with all the  
7 technical requirements set forth in the City's August 9, 2006, Request for Proposals for design  
8 and build of the City CT Projects. The site, the technical requirements, planned operations,  
9 and environmental impacts of the Airport CT Project remain unchanged; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors finds that based on substantial  
11 evidence and in light of the whole record: (1) no substantial changes have occurred in the  
12 Airport CT Project proposed for approval under this Resolution that will require revisions in the  
13 Final MND due to the involvement of new significant environmental effects or a substantial  
14 increase in the severity of previously identified significant effects; (2) no substantial changes  
15 have occurred with respect to the circumstances under which the Airport CT Project is  
16 undertaken which would require major revisions to the Final MND Decision due to the  
17 involvement of new significant environmental effects, or a substantial increase in the severity  
18 of effects identified in the Final MND; and (3) no new information of substantial importance to  
19 the Airport CT Project has become available which would indicate (a) the Airport CT Project  
20 will have significant effects not discussed in the Final MND, (b) significant environmental  
21 effects will be substantially more severe; (c) mitigation measures or alternatives found not  
22 feasible which would reduce one or more significant effects have become feasible; or (d)  
23 mitigation measures or alternatives which are considerably different from those in the Final  
24 MND would substantially reduce one or more significant effects on the environment; and, be it  
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1           FURTHER RESOLVED, That based on the foregoing and in light of the whole record,  
2 the Board finds that, the 07-0188 CEQA Findings remain applicable to the Airport CT Project,  
3 and the Board therefore adopts the 07-0188 CEQA Findings as its own and incorporates them  
4 herein by reference. The Board in its independent judgment, finds that all significant  
5 environmental impacts will be mitigated through adoption of mitigation measures contained in  
6 the Mitigation Monitoring and Reporting Program ("MMRP") attached as Exhibit 1 to  
7 Attachment C of the 07-0188 CEQA Findings and incorporated by reference herein. The  
8 Board has reviewed and considered the entire record, including the Final MND, and hereby  
9 adopts the Airport CT MMRP; and, be it

10           FURTHER RESOLVED, That the Board of Supervisors approves the ICC contract and  
11 authorizes the PUC General Manager to execute and award the contract, contingent upon the  
12 receipt of performance and payment bonds as required by the contract documents and  
13 deemed satisfactory by the PUC General Manager and the City Attorney; and, be it

14           FURTHER RESOLVED, That the Board of Supervisors approves the key terms of the  
15 Amended and Restated PPA as set forth herein, and authorizes the PUC General Manager to  
16 execute an Amended and Restated PPA consistent with those terms and including additional  
17 amendments that do not materially alter the balance of benefits and burdens of the contract;  
18 and, be it

19           FURTHER RESOLVED, That the Board of Supervisors finds that the City CT Projects  
20 satisfy all of the requirements of Ordinance 124-01, including the requirement of Section 3, for  
21 the reasons identified in Sections (c) and (d) of this resolution and elsewhere in this file; and,  
22 be it

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1           FURTHER RESOLVED, That the Board of Supervisors finds that the requirements of  
2 Administrative Code Chapter 29 regarding fiscal feasibility do not apply to the City CT Projects  
3 for two independent reasons, as discussed above in this Resolution; and, be it

4           FURTHER RESOLVED, That the Board of Supervisors finds that even though Chapter  
5 29 does not apply to the City CT Projects, the City CT Projects are fiscally feasible and  
6 responsible under the criteria established by Section 29.2(a) of the Administrative Code. In  
7 making this finding, the Board of Supervisors has considered all of the information presented  
8 to the Board of Supervisors on the City CT Projects, including the following: (1) direct and  
9 indirect financial benefits of the City CT Projects to the City, including the potential for cost  
10 savings or new revenues from the City CT Projects; (2) the cost of construction; (3) available  
11 funding for the City CT Projects; (4) the long-term operating and maintenance costs of the City  
12 CT Projects; and (5) debt load to be carried by the PUC; and, be it

13           FURTHER RESOLVED, That the Board of Supervisors adopts the provisions of the  
14 Memorandum of Understanding between the PUC and the Director of Public Finance, which is  
15 on file with the Clerk of the Board of Supervisors in File No. 080524, as to the budgeting and  
16 payment of debt service by the PUC; and, be it

17           FURTHER RESOLVED, That the Board of Supervisors approves the transfer of  
18 jurisdiction of the Potrero Site from the Port to the PUC, or in the alternative, the long-term  
19 lease of the Potrero Site to the PUC for the life of the Potrero CT Project, conditioned upon  
20 the approval of the New Potrero MOU by the Port Commission, the MTA Board of Directors  
21 and the PUC and subject to the terms of the New Potrero MOU. The Board of Supervisors  
22 directs the City's Director of Property to transfer jurisdiction of the Potrero Site to the PUC, if  
23 included in the New Potrero MOU, upon the receipt of such approvals and satisfaction of the  
24 conditions set forth in the New Potrero MOU for jurisdictional transfer of the Potrero Site to the  
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1 PUC, without further action by this Board, or in the alternative, this Board approves the long-  
2 term lease of the Potrero Site to the PUC for the life of the Potrero CT Project, each upon  
3 payment of fair market value for the Potrero Site; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors approves the modification of  
5 the United leasehold as required to accommodate the PUC's use of the Airport Site for the  
6 purpose of the Airport CT Project subject to the terms of the New Airport MOU agreed to by  
7 the parties, including payment by the PUC of the fair market rent of the Airport Site; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors finds that the Potrero CT  
9 Project is consistent with the City's General Plan and with the priority policies in Planning  
10 Code Section 101.1. This finding is consistent with the findings of the Planning Department,  
11 which are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and  
12 incorporated herein by reference. The Board of Supervisors adopts these findings as its own  
13 and finds that the proposed Potrero CT Project is consistent with the City's General Plan and  
14 with Planning Code Section 101.1, for the reasons set forth by the Planning Department; and,  
15 be it

16 FURTHER RESOLVED, That the Board of Supervisors finds that the Airport CT Project  
17 is consistent with the City's General Plan and with the priority policies in Planning Code  
18 Section 101.1. This finding is consistent with the findings of the Planning Department, which  
19 are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and  
20 incorporated herein by reference. The Board of Supervisors adopts these findings as its own  
21 and finds that the proposed Airport CT Project is consistent with the City's General Plan and  
22 with Planning Code Section 101.1, for the reasons set forth by the Planning Department; and,  
23 be it

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1           FURTHER RESOLVED, That if after the approval of this Resolution but prior to the  
2 issuance of the full notice to proceed under Phase 2 of the ICC contract, the ISO states in  
3 writing that the installation of three or fewer of the City's combustion turbines will be sufficient  
4 to replace the reliability need for the Potrero Power Plant, then the PUC shall

5                       (1)     The PUC General Manager shall prepare a proposal (a “GM  
6 Proposal”) of actions to be taken to revise the project scope to allow for the development of  
7 the fewest number of turbines that would still be reasonably expected to replace the reliability  
8 need for the Potrero Power Plant in light of the most recent statements from the ISO. A GM  
9 Proposal shall include a description of the progress of the City CT projects to date along with  
10 a discussion of any significant financial, environmental, operating or other impacts that would  
11 result from actions taken to reduce the scope of the projects.

12                      (2)     The PUC General Manager shall submit the GM Proposal to the  
13 Mayor and the Board of Supervisors for their consideration, and shall refrain from issuing the  
14 notice to proceed on Phase 2 for a period of at least 30 days from the date of submission of  
15 any GM proposal under this section (the “GM Proposal Review Period”).

16                      (3)     The Board of Supervisors and the Mayor shall have the GM  
17 Proposal Review Period to introduce legislation directing actions to be taken in light of the ISO  
18 statement and the GM Proposal.

19                      (4)     If no such legislation is introduced by the end of the GM Proposal  
20 Review Period, then the PUC General Manager shall be authorized and directed to implement  
21 the GM Proposal and to take all other actions consistent with achieving the revised project  
22 scope set forth therein, including the issuance of the full notice to proceed on the components  
23 of the project that would still be pursued under the GM Proposal project scope.