

1 [Certificates of Participation for Multiple Capital Improvement Projects.]

2

3 **Resolution approving the form of and authorizing the distribution of a preliminary official**  
4 **statement relating to the execution and delivery of City and County of San Francisco**  
5 **Certificates of Participation and authorizing the preparation, execution and delivery of a**  
6 **final official statement; delegating to the Director of Public Finance the authority to sell**  
7 **the certificates by either a competitive or negotiated sale; ratifying the approvals and**  
8 **terms and conditions of a previous resolution; declaring the official intent of the City and**  
9 **County of San Francisco to reimburse itself from the proceeds of future bonded**  
10 **indebtedness for purposes of complying with the Internal Revenue Code of 1986, as**  
11 **amended; and related matters.**

12

13 WHEREAS, On May 5, 2009 the Board of Supervisors (the "Board") passed Ordinance  
14 No. 74-09, and such ordinance was approved by the Mayor of the City on May 11, 2009 (the  
15 "Ordinance"); and,

16 WHEREAS, The Ordinance authorized the execution and delivery of not to exceed  
17 \$42,000,000 aggregate principal amount of Certificates of Participation (the "Certificates") for  
18 the purpose of financing the acquisition, construction, installation of improvements on certain  
19 city streets (the "Project"); and,

20 WHEREAS, Pursuant to the Ordinance the Board approved the forms and execution  
21 and delivery of documents related to the Certificates and authorized and directed the Director  
22 of the Office of Public Finance (the "Director"), to provide for the competitive sale of the  
23 Certificates using the approved forms of such documents and subject to certain terms and  
24 conditions; and,

25

1           WHEREAS, Among other matters, the Ordinance approved the form of a preliminary  
2 official statement relating to the Certificates (the "Preliminary Official Statement") and the  
3 forms of Official Notice of Sale and Notice of Intention to Sell relating to the Certificates; and,

4           WHEREAS, The Director has determined to undertake the issuance of the Certificates,  
5 under the authority granted by and subject to the terms and conditions set forth in the  
6 Ordinance; and,

7           WHEREAS, Since the Board approved the form and authorized the distribution of the  
8 Preliminary Official Statement, the City's budget and finances have materially changed; and,

9           WHEREAS, Since the Board approved the Ordinance, the capital markets have  
10 continued to experience severe turmoil, including the market for municipal securities; and,

11           WHEREAS, In connection with such material changes, the Director now seek approval  
12 of the form of revised preliminary official statement relating to the Certificates (the "Revised  
13 2009 Preliminary Official Statement"); and,

14           WHEREAS, In order to ensure an orderly sale of the Certificates, the Director seeks  
15 the authority to choose with respect to the Certificates either a negotiated sale or a  
16 competitive sale on terms that are advantageous financially to the City; and,

17           WHEREAS, The Director now seeks approval of the form of a purchase agreement  
18 relating to a negotiated sale (the "Purchase Agreement"); and,

19           WHEREAS, The Director has submitted the form of the 2009 Preliminary Official  
20 Statement and the form of the Purchase Agreement to the Board; such documents are on file  
21 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, which is hereby  
22 declared to be a part of this Resolution as if set forth fully herein; and,

23           WHEREAS, The Board of Supervisors has determined that the moneys advanced and  
24 to be advanced to pay certain expenditures of the Project are or will be available only for a  
25

1 temporary period and it is necessary to reimburse all such expenditures made on and after  
2 the date hereof with respect to the Project from the proceeds of the Bonds; and,

3 WHEREAS, Section 1.150-2 of the Treasury Regulations requires the Board of  
4 Supervisors to declare its reasonable official intent to reimburse prior expenditures for the  
5 Project with proceeds of a borrowing; now, therefore, be it

6 RESOLVED By the Board of Supervisors of the City and County of San Francisco, as  
7 follows:

8 Section 1. Recitals. All of the recitals herein are true and correct.

9 Section 2. Official Statement. The Controller of the City (the "Controller") is hereby  
10 authorized and directed, in consultation with the City Attorney, to prepare or cause to be  
11 prepared a revised preliminary official statement relating to the Certificates. The form of  
12 Revised 2009 Preliminary Official Statement is hereby approved with such changes,  
13 additions, amendments or modifications made in accordance with Section 3 hereof. The  
14 Controller is hereby authorized to cause the distribution of the Revised 2009 Preliminary  
15 Official Statement in connection with the Certificates, deemed final for purposes of Rule 15c2-  
16 12 of the Securities and Exchange Act of 1934, as amended, and to sign a certificate to that  
17 effect. The Controller is hereby further authorized and directed to prepare and sign a final  
18 Official Statement for the Certificates. The Co-Financial Advisors to the City (the "Co-  
19 Financial Advisors"), under the direction of the Director, are hereby authorized and directed to  
20 cause to be printed and mailed, or distributed electronically, to prospective bidders or  
21 purchasers, as appropriate, for the Certificates, copies of the Revised 2009 Preliminary  
22 Official Statement and the final Official Statement relating to such Certificates.

23 Section 3. Modifications to Preliminary Official Statement. The Controller is further  
24 authorized, in consultation with the City Attorney, to approve and make such changes,  
25 additions, amendments or modifications to the 2009 Preliminary Official Statement or the final

1 Official Statement described in Section 2 as may be necessary or advisable, including to the  
2 extent necessary to provide for the issuance of BABs (as described in Section 5 below). The  
3 approval of any change, addition, amendment or modification to the 2009 Preliminary Official  
4 Statement or the final Official Statement shall be evidenced conclusively by the delivery of the  
5 2009 Preliminary Official Statement and the execution and delivery of the final Official  
6 Statement.

7 Section 4. Authorization for Negotiated Sale; Authorization to Select Underwriters;  
8 Approval of the Form of Purchase Contract. The Director, in consultation with the Controller,  
9 is hereby authorized to sell the Certificates by negotiated sale pursuant to a purchase  
10 contract, if the Director determines that such manner of sale is in the best interest of the City,  
11 such determination to be conclusively evidenced by the execution and delivery of a purchase  
12 contract for the Certificates. The Director is hereby authorized and directed to RBC Capital  
13 Markets and Siebert Branford Shank & Co. LLC (collectively, the "Underwriters") to serve as  
14 the investment banker firms to act as underwriters of the Certificates in accordance with City  
15 policies and procedures; provided however the Director shall be authorized to select  
16 alternative investment banking firms to underwrite the Certificates if the Director, in  
17 consultation with the Controller and the City Attorney, shall determine that the investment  
18 banking firms cannot underwrite the Certificates on terms advantageous to the City. The form  
19 of the Purchase Contract between the City and the Underwriters, as presented to this Board,  
20 a copy of which is on file with the Clerk of the Board, is hereby approved. The Underwriters'  
21 discount under the Purchase Agreement shall not exceed 2.00% of the principal amount of  
22 the Certificates. If the Director determines to sell the Certificates by negotiated sale, the  
23 Director is hereby authorized to execute the Purchase Contract, with such changes, additions,  
24 modifications or deletions as the Director may approve upon consultation with the City

25

1 Attorney, such approval to be conclusively evidenced by the execution and delivery of the  
2 Purchase Contract.

3 Section 5. Authorization for Build America Bonds. The Director is hereby authorized to  
4 cause all or a portion of the Certificates to be designated and issued as federally taxable  
5 "Build America Bonds" (the "BABs") under the American Recovery and Reinvestment Act, if  
6 the Director determines that the issuance of BABs, after taking into account the Federal cash  
7 subsidy payment to the City, will result in lower true interest costs on the Certificates, or the  
8 portion so designated and issued as BABs, such determination to be conclusively evidenced  
9 by the execution and delivery of the Purchase Contract.

10 Section 6. Compliance with Treasury Regulations. The Board of Supervisors adopts  
11 this Resolution for purposes of establishing compliance with the requirements of Section  
12 1.150-2 of the Treasury Regulations. This Resolution does not bind the Board of Supervisors  
13 to make any expenditure, incur any indebtedness or proceed with the Project.

14 Section 7. Project Costs. On the date of the expenditure to be reimbursed, all  
15 reimbursable costs of the Project will be of a type properly chargeable to a capital account  
16 under general federal income tax principles.

17 Section 8. Ratification. The terms and conditions and approvals of the 2008  
18 Resolution, except as such terms and conditions and approvals are superseded by this  
19 resolution, are hereby approved, confirmed and ratified.

20 APPROVED AS TO FORM:

21 DENNIS J. HERRERA, City Attorney

22

23 By: \_\_\_\_\_  
24 MARK D. BLAKE  
25 Deputy City Attorney