Amendment of the Whole
in Committee. 12/01/10

FILE NO. 101125 RESOLUTION NO. 588-10

[Golden Gate Park Music Concourse Garage Refinance]

Resolution concurring in the recommendation of the Controller and the Director of the Office of Public Finance that the issuance of not to exceed $30,000,000 Tax Exempt Bank Qualified Bonds ("Bonds") with First Republic Bank for and on behalf of the Music Concourse Community Partnership, a California nonprofit public benefit corporation, is reasonably prudent; directing the Controller and the Director of the Office of Public Finance to do everything necessary and desirable to provide for the issuance of such Bonds; and providing public approval for the Bonds and the project financed and refinanced thereby for the purposes of Section 147(f) of the Internal Revenue Code.

WHEREAS, At the June 2, 1998, special election the voters of the City and County of San Francisco (the "City") approved Proposition J, now codified in Appendix 41 of the City's Administrative Code ("Proposition J"); and

WHEREAS, Proposition J is an initiative measure which, among other things, authorized the creation of the Golden Gate Park Concourse Authority (the "Authority") and the construction, by or on behalf of the Authority, of an underground parking facility (the "Facility") in Golden Gate Park located between the M.H. de Young Museum and the California of Academy of Sciences in the City containing approximately 800 parking spaces (the "Project"); and

WHEREAS, Proposition J also authorized the City's Board of Supervisors (the "Board of Supervisors") to grant administrative jurisdiction over certain lands in or near the area of the Golden Gate Park Music Concourse (the "Concourse") to the Authority to facilitate the Project; and

WHEREAS, Music Concourse Community Partnership ("MCCP"), is a nonprofit public benefit corporation organized and existing under the laws of the State of California, formed and existing for the primary purpose of funding, designing, constructing and operating the Facility; and

WHEREAS, By Resolution No. 737-03, the Board of Supervisors approved a ground lease (the "Lease") between MCCP, as tenant, and the City, acting through the Authority and the Recreation and Park Commission (the "Commission"), as landlord, which governs the relationship between the parties with respect to the construction and operation of the Facility; and

WHEREAS, Under the terms of the Lease, MCCP was granted a long-term leasehold interest in lands beneath the Concourse and the right to construct the Facility at its own expense, and as such shall be deemed the owner of the physical improvements constituting the Facility until expiration or termination of the Lease, at which time title to such improvements shall be transferred to the City at no cost; and

WHEREAS, Under the terms of the Lease, MCCP is permitted to apply the revenues of the Facility to help finance the costs of constructing the Facility; and

WHEREAS, In June 2005, California Statewide Communities Development Authority (the "CSCDA") issued $26,500,000 in Revenue Bond Anticipation Notes (the "Notes") on behalf of the MCCP to finance a portion of the costs of construction of the Project; and

WHEREAS, The Notes have a final maturity of December 1, 2011; and

WHEREAS, MCCP expected on or prior to the maturity of the Notes to secure long-term financing for the Project, including the retirement of the Notes, from the sale of refunding revenue bonds or other evidences of indebtedness as permitted by law; and

WHEREAS, The Project was partially completed in October 2005, and finally completed in 2007; and

WHEREAS, Approximately $1,540,000 of the cost of the Project is still owing to Swinerton Builders and that amount has been accruing interest at 3% per annum from September 1, 2006 (the "Contract Amount"); and

WHEREAS, In December 2007 and June 2008 MCCP borrowed $1,450,000 from First Republic Bank in order to make interest payments on the Notes (the "Loan") due to cash flow deficits; and

WHEREAS, The Loan and the Contract Amount, together with the principal amount of the Notes, did not exceed the amount reasonably necessary to facilitate the Project; and

WHEREAS, MCCP now proposes to secure long-term private placement financing with First Republic Bank through the issuance of bonds by the California Enterprise Development Authority ("CEDA") in an amount not to exceed $30,000,000 (the "Bonds") to refund or refinance the Notes and the Loan and to pay the Contract Amount, under provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), specifically, Section 265(b)(3)(G) of the Code (hereinafter, the "ARRA Bank Qualified Tax Exempt Bond Program"); and,

WHEREAS, The ARRA Bank Qualified Tax Exempt Bond Program, which expires December 31, 2010, offers advantageous terms including but not limited attractive interest rates and lower costs of issuance; and,

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code, as amended (the "Code"), CEDA approval must come from approval of a governmental unit on behalf of which CEDA issues its obligations, and CEDA has thus requested that the City provide its approval of the Bonds and the financing/refinancing of the Project with the proceeds thereof; and

WHEREAS, pursuant to Section 147(f) of the Code, the issuance of the Bonds by CEDA and the financing and refinancing of the Project with the proceeds thereof must be approved by the City because the Project is located within the territorial limits of the City; and

WHEREAS, the Board of Supervisors of the City is the elected legislative body of the City and is therefore an applicable elected representative eligible to approve the issuance of the Bonds and the financing and refinancing of the Project with the proceeds thereof pursuant to Section 147(f) of the Code; and

WHEREAS, pursuant to Section 147(f) of the Code, the Board of Supervisors has, following notice duly given, held a public hearing regarding the issuance of the Bonds and the financing/refinancing of the Project with the proceeds thereof, and now desires to approve the issuance of the Bonds and the financing/refinancing of the Project with the proceeds thereof;

WHEREAS, In accordance with the Ground Lease and the First Amendment to the Ground Lease, MCCP is not required to obtain approval by the Board of Supervisors for a refunding of the Notes and the Loan and the payment of the Contract Amount, if such a refunding is reasonably prudent in the light of MCCP's financial situation; and,

WHEREAS, notwithstanding that MCCP is not required to obtain approval by the Board of Supervisors for a refunding of the Notes and the Loan and the payment of the Contract Amount, approval of the Bonds and the Project is required for purposes of Section 147(f) of the Code; and

WHEREAS, The Controller and the Director of the Office of Public Finance have determined to proceed with a refunding of the Notes and the Loan, and the payment of the Contract Amount through the issuance and placement of the Bonds with First Republic Bank, and believes such financing is reasonably prudent; now, therefore, be it

RESOLVED, The Board of Supervisors hereby approves the issuance of the Bonds, and the financing and refinancing of the Project (through the refunding of the Notes and the Loan and the payment of the Contract Amount) with the proceeds thereof, by CEDA. It is the purpose and intent of the Board of Supervisors that this Resolution constitute approval of the issuance of the Bonds for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the governmental unit on behalf of which CEDA issues its obligations and having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f).

RESOLVED, That the Board of Supervisors hereby concurs with the Controller and the Director of the Office of Public Finance that such financing is reasonably prudent, and directs the Controller and the Director of the Office Public Finance, and all other appropriate officers, employees, representatives and agents of the City, to do everything necessary and desirable to provide for the issuance of not more than $30,000,000 of Tax Exempt Bank Qualified Bonds on a private placement basis with First Republic Bank on such terms and conditions as the Controller and the Director of the Office Public Finance, in consultation with MCCP and the City Attorney, believe are reasonably prudent and in accordance with the provisions of this Resolution. Provided, however, that no funds of the City shall be made available or shall otherwise secure repayment of the Bonds.

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 101125 **Date Passed:** December 14, 2010

Resolution concurring in the recommendation of the Controller and the Director of the Office of Public Finance that the issuance of not to exceed $30,000,000 Tax Exempt Bank Qualified Bonds ("Bonds") with First Republic Bank for and on behalf of the Music Concourse Community Partnership, a California nonprofit public benefit corporation, is reasonably prudent; directing the Controller and the Director of the Office of Public Finance to do everything necessary and desirable to provide for the issuance of such Bonds; and providing public approval for the Bonds and the project financed and refinanced thereby for the purposes of Section 147(f) of the Internal Revenue Code.

December 01, 2010 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

December 01, 2010 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 07, 2010 Board of Supervisors - CONTINUED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

December 14, 2010 Board of Supervisors - ADOPTED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 101125

I hereby certify that the foregoing Resolution was ADOPTED on 12/14/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

December 20, 2010
Date Approved