

File No. 101159

Committee Item No. 9  
Board Item No. 27

### COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: October 13, 2010

Board of Supervisors Meeting

Date 10.19.10

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget Analyst Report                                     |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                                |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ethics Form 126   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)                          |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report <del>*</del> |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                                     |

#### OTHER

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Completed by: Victor Young  
Completed by: Victor Young

Date: October 8, 2010  
Date: 10/14/10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

87

01.8.0

[Taxable and/or Tax Exempt Certificates of Participation for Various Capital Improvements - Not to Exceed \$48,000,000]

**Ordinance authorizing the execution and delivery of Certificates of Participation in an aggregate principal amount not to exceed \$48,000,000 to finance the acquisition, construction, improvement and installation of certain street improvements and of various disability access improvement projects; approving the form of a Second Supplement to Trust Agreement between the City and County of San Francisco and the Trustee named therein (including certain indemnities contained therein); approving the form of a Second Supplement to Property Lease between the City, as lessor, and the Trustee, as lessee; approving the form of a Second Supplement to Project Lease between the Trustee, as lessor, and the City, as lessee; approving the form of an Official Notice of Sale and Notice of Intention to Sell for the Certificates of Participation, if sold by competitive sale; authorizing certain actions relating to the Certificates of Participation, if sold by negotiated sale; delegating to the Director of Public Finance the authority to sell the Certificates of Participation by either a competitive or negotiated sale; approving the form of a Purchase Contract between the City and the underwriter(s) selected in accordance herewith, if the Certificates of Participation are sold by negotiated sale; approving the form of an official statement in preliminary and final form; approving the form of a Continuing Disclosure Certificate; granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of the Certificates of Participation; approving modifications to documents; and ratifying previous actions taken in connection therewith.**

1           WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
2 "Board of Supervisors" or the "Board"), desires to provide for capital improvements to various  
3 City streets and also to provide for various disability access improvement projects  
4 (collectively, the "Project"), and the City is authorized pursuant to its charter and the laws of  
5 the State to enter into lease financings for such purpose; and

6           WHEREAS, the City and U.S. Bank National Association (the "Trustee") have  
7 previously entered into a Property Lease, dated as of May 1, 2009 (the "Original Property  
8 Lease"), pursuant to which the City has leased certain real property and all improvements  
9 thereon (collectively, the "Leased Property") to the Trustee; and

10           WHEREAS, pursuant to a Project Lease, dated as of May 1, 2009, by and between the  
11 City and the Trustee (the "Original Project Lease"), the Trustee has leased the Leased  
12 Property back to the City; and

13           WHEREAS, in order to provide funds for certain capital improvements of the City, the  
14 Trustee executed and delivered certificates of participation captioned "\$163,335,000 City and  
15 County of San Francisco Certificates of Participation, Series 2009A (Multiple Capital  
16 Improvement Projects)" (the "2009A Certificates") under a Trust Agreement, dated as of May  
17 1, 2009, between the City and the Trustee (the "Original Trust Agreement"); and

18           WHEREAS, the Board authorized the execution and delivery of the 2009A Certificates  
19 by Ordinance No. 74-09 passed on May 5, 2009, and approved by the Mayor of the City on  
20 May 11, 2009; and

21           WHEREAS, the 2009A Certificates evidence direct undivided interests in the lease  
22 payments made by the City under the Original Project Lease; and

23           WHEREAS, The Trust Agreement provides for the issuance of additional Certificates of  
24 Participation to provide funds for additional capital projects of the City by the execution and  
25 delivery of a supplement to the Trust Agreement, and authorizes the principal and interest

1 with respect to said Certificates of Participation to be secured by a supplement to the Property  
2 Lease and to be paid from amounts paid by the City under a supplement to the Project Lease;  
3 and,

4 WHEREAS, in order to provide funds for certain street improvements of the City, the  
5 Trustee subsequently executed and delivered a series of certificates of participation captioned  
6 "\$37,885,000 City and County of San Francisco Certificates of Participation, Series 2009B  
7 (Multiple Capital Improvement Projects)" (the "2009B Certificates") under a First Supplement  
8 to Trust Agreement dated as of September 1, 2009 (the "First Supplement to Trust  
9 Agreement"); and

10 WHEREAS, in connection with the execution and delivery of the 2009B Certificates, the  
11 City and the Trustee have previously entered into a First Supplement to Property Lease,  
12 dated as of September 1, 2009 (the "First Supplement to Property Lease"), supplementing the  
13 Original Property Lease to provide for additional rental to be paid by the Trustee in connection  
14 with the financing of the 2009B Project and certain related matters; and

15 WHEREAS, in connection therewith, the City and the Trustee simultaneously entered  
16 into a First Supplement to Project Lease, dated as of September 1, 2009, by and between the  
17 City and the Trustee (the "First Supplement to Project Lease"), supplementing the Original  
18 Project Lease to provide for additional Base Rental to be paid by the City in connection with  
19 the financing of the 2009B Project and certain related matters; and

20 WHEREAS, the 2009B Certificates evidence direct undivided interests in the lease  
21 payments made by the City under the Original Project Lease, as supplemented by the First  
22 Supplement to Project Lease, on a parity basis with the 2009A Certificates; and

23 WHEREAS, the Board desires to finance the acquisition, construction and installation  
24 of the Project, and to cause the execution and delivery of one or more series of additional  
25

1 Certificates of Participation (as further defined herein, the "Certificates") to provide funds for  
2 the Project; and

3 WHEREAS, in connection with the execution and delivery of Certificates, the City and  
4 the Trustee will enter into a Second Supplement to Property Lease (as further defined herein,  
5 the "Second Supplement to Property Lease"), supplementing the Original Property Lease to  
6 provide for additional rental to be paid by the Trustee in connection with the financing of the  
7 Project and certain related matters; and

8 WHEREAS, in connection therewith, the City and the Trustee will simultaneously enter  
9 into a Second Supplement to Project Lease, by and between the City and the Trustee (as  
10 further defined herein, the "Second Supplement to Project Lease"), supplementing the  
11 Original Project Lease to provide for additional Base Rental to be paid by the City in  
12 connection with the financing of the Project and certain related matters; and

13 WHEREAS, the Certificates will evidence direct undivided interests in the lease  
14 payments made by the City under the Original Project Lease, as supplemented by the First  
15 Supplement to Project Lease and the Second Supplement to Project Lease, on a parity basis  
16 with the 2009A Certificates and the 2009B Certificates;

17 WHEREAS, the Certificates may be sold by competitive sale pursuant to an official  
18 notice of sale and a notice of intention to sell or, in accordance with certain procedures, by  
19 negotiated sale; and,

20 WHEREAS, In order to ensure an orderly sale of the Certificates, the Director of Public  
21 Finance of the City or her designee (collectively, the "Director") seeks the authority to choose  
22 with respect to the Certificates either a negotiated sale or a competitive sale on terms that are  
23 advantageous financially to the City; and,

24 WHEREAS, The Director now seeks approval of the form of a purchase contract  
25 relating to a negotiated sale of the Certificates (the "Purchase Contract") and of the

1 underwriters that shall underwrite the sale of the Certificates, if so determined by the Director;  
2 and

3 WHEREAS, the Board has been presented with the form of certain documents referred  
4 to herein relating to the Certificates, including a Second Supplement to the Trust Agreement,  
5 a Second Supplement to the Property Lease and a Second Supplement to the Project Lease,  
6 and the Board has examined and is approving each document and desires to authorize and  
7 direct the execution of such documents and the consummation of such financing; and,

8 WHEREAS, the adoption of this Ordinance shall constitute authorization of the  
9 Certificates within the meaning of Section 864 of the California Code of Civil Procedure and  
10 any Validation Act that is effective after this Ordinance takes effect;

11 Be it ordained by the People of the City and County of San Francisco, as follows:

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

13 Section 2. Conditions Precedent. All conditions, things and acts required by law to  
14 exist, to happen and to be performed precedent to and in the execution and delivery of the  
15 Certificates exist, have happened and have been performed in due time, form and manner in  
16 accordance with applicable law, and the City is now authorized pursuant to its Charter and  
17 applicable law to enter into the transactions described herein in the manner and form provided  
18 in this Ordinance.

19 Section 3. File Documents. The documents presented to this Board and on file with  
20 the Clerk of the Board or her designee (the "Clerk") are contained in File No. 101159.

21 Section 4. Approval of the Certificates. The Board hereby approves the execution and  
22 delivery of the Certificates, which shall be executed and delivered in accordance with the  
23 second supplement to trust agreement referred to in Section 5 below (the "Second  
24 Supplement to Trust Agreement"), as the same is finally executed and delivered. The  
25 proceeds of the Certificates will be used to (i) fund the Project; (ii) fund a reserve fund or the

1 costs of a reserve surety policy, as the Controller or his designee shall determine; (iii) fund  
2 capitalized interest; and (iv) pay costs of issuance of the Certificates. The Certificates shall be  
3 designated as "City and County of San Francisco Certificates of Participation, (Multiple  
4 Capital Improvement Projects)," with such other designations as to series and year of  
5 issuance as deemed appropriate by the Director. The Certificates may be executed and  
6 delivered in one or more series, all or any portion of which may be designated as Build  
7 America Bonds under Section 54AA of the Internal Revenue Code, or under any other  
8 provision of the Internal Revenue Code that creates a substantially similar direct-pay subsidy  
9 program in the future. The Trustee shall be authorized to cause the execution and delivery of  
10 Certificates in an aggregate principal amount which shall not be greater than \$48,000,000,  
11 and which shall bear interest rates not to exceed 12 percent per annum. The Certificates  
12 shall be subject to prepayment as set forth in the Second Supplement to Trust Agreement. To  
13 the extent deemed necessary by the Director, this Board authorizes the procurement of credit  
14 enhancement for the Certificates, including, but not limited to, municipal bond insurance or a  
15 debt service reserve fund surety policy. Notwithstanding Section 15 hereof, the documents  
16 authorized herein may be modified or amended to permit the procurement of credit  
17 enhancement for the Certificates, to the extent deemed necessary by the Director, upon  
18 consultation with the City Attorney.

19 Section 5. Approval of the Second Supplement to Trust Agreement. The form of a  
20 second supplement to trust agreement (the "Second Supplement to Trust Agreement")  
21 between the City and the Trustee, as presented to this Board, a copy of which is on file with  
22 the Clerk of the Board, is hereby approved. The Mayor of the City or his designee  
23 (collectively, the "Mayor") is hereby authorized to execute the Second Supplement to Trust  
24 Agreement, and the Clerk of the Board or her designee (collectively, the "Clerk of the Board"),  
25 is hereby authorized to attest to and affix the seal of the City on the Second Supplement to



1 Trust Agreement, with such changes, additions and modifications as the Mayor may make or  
2 approve in accordance with Section 15 hereof.

3 In connection with any Build America Bonds, the Director of Public Finance is  
4 authorized to make any necessary or desirable changes to the Second Supplement to Trust  
5 Agreement, including but not limited to any election required so that the City is entitled, with  
6 respect to such Certificates, to receive interest subsidy payments pursuant to Section 6431 of  
7 the Code. If such election is made, the Director of Public Finance is further authorized to  
8 approve language to be inserted into the Trust Agreement, and/or to enter into a separate  
9 agreement with the Trustee, to require the Trustee to file any documentation or certificates  
10 with the Internal Revenue Service required in connection with any such interest subsidy  
11 payments.

12 Section 6. Approval of the Second Supplement to Property Lease. The form of a  
13 second supplement to property lease between the City and the Trustee (the "Second  
14 Supplement to Property Lease"), providing for the payment of additional rental by the Trustee  
15 in connection with the issuance of the Certificates, as presented to this Board, a copy of which  
16 is on file with the Clerk of the Board, is hereby approved. The term of the Second  
17 Supplement to Property Lease shall not extend beyond 2053. The Mayor is hereby  
18 authorized to execute the Second Supplement to Property Lease, and the Clerk of the Board  
19 is hereby authorized to attest and to affix the seal of the City on the Second Supplement to  
20 Property Lease with such changes, additions and modifications as the Mayor may make or  
21 approve in accordance with Section 15 hereof.

22 Section 7. Approval of the Second Supplement to Project Lease. The form of a  
23 second supplement to project lease between the City and the Trustee (the "Second  
24 Supplement to Project Lease"), providing for the financing of the Project, as presented to this  
25 Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor

1 is hereby authorized to execute the Second Supplement to Project Lease, and the Clerk of the  
2 Board is hereby authorized to attest and to affix the seal of the City on the Second  
3 Supplement to Project Lease with such changes, additions and modifications as the Mayor  
4 may make or approve in accordance with Section 15 hereof, provided however, that the  
5 maximum Base Rental (as defined in the Project Lease) relating to the Project scheduled to  
6 be paid under the Project Lease, as supplemented by the Second Supplement to Project  
7 Lease in any fiscal year shall not exceed \$4,900,000 and the term of the Second Supplement  
8 to Project Lease shall not extend beyond 2053.

9       Section 8. Sale and Award of Certificates by Competitive Sale. In the event the  
10 Director determines to sell the Certificates by competitive sale, the Director, on behalf of the  
11 Controller, is hereby authorized and directed to receive bids for the purchase of the  
12 Certificates, and the Controller is hereby authorized and directed to award the Certificates to  
13 the bidder whose bid represents the lowest true interest cost to the City, all in accordance with  
14 the procedures described in the Notice of Sale (as defined herein).

15       Section 9. Approval of Form of Official Notice of Sale. The form of an official notice of  
16 sale relating to the Certificates (the "Official Notice of Sale"), as presented to this Board, a  
17 copy of which is on file with the Clerk of the Board, is hereby approved. The Director is  
18 hereby authorized to approve the distribution of an Official Notice of Sale for the Certificates,  
19 with such changes, additions modifications or deletions as the Director may approve upon  
20 consultation with the City Attorney; such approval to be conclusively evidenced by the  
21 distribution of the Official Notice of Sale to potential bidders for or purchasers of the  
22 Certificates.

23       Section 10. Approval of Notice of Intention to Sell Relating to the Certificates. The  
24 form of a notice of intention to sell relating to the Certificates (the "Notice of intention to Sell"),  
25 as presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby

1 approved. The Director is hereby authorized to approve the publication of the Notice of  
2 Intention to Sell relating to the Certificates, with such changes, additions, modifications or  
3 deletions as the Director may approve upon consultation with the City Attorney; such approval  
4 to be conclusively evidenced by the publication of the Notice of Intention to Sell relating to the  
5 Certificates.

6           Section 11. Authorization for Sale of Certificates by Negotiated Sale; Authorization to  
7 Select Underwriters; Approval of the Form of Purchase Contract. The Director, in consultation  
8 with the Controller, is hereby authorized to sell the Certificates by negotiated sale pursuant to  
9 the Purchase Contract, by and between the City and the underwriter(s) named therein (the  
10 "Underwriters"), if the Director determines that such manner of sale is in the best interest of  
11 the City, such determination to be conclusively evidenced by the execution and delivery of the  
12 Purchase Contract as hereinafter approved. The form of such Purchase Contract as  
13 presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby  
14 approved. The Controller is hereby authorized to execute the Purchase Contract with such  
15 charges, additions and modifications as the Controller may make or approve in accordance  
16 with Section 15 hereof; provided however, that the Underwriters' discount under any such  
17 Purchase Contract shall not exceed 2.00% of the principal amount of the Certificates. In order  
18 to facilitate the sale of the Certificates by negotiated sale, the Director of Public Finance is  
19 hereby authorized and directed to appoint one or more financial institutions to act as  
20 underwriter for the Certificates in accordance with City policies and procedures, including, but  
21 not limited to, the City's policy to provide locally disadvantaged minority business enterprises  
22 and women enterprises an equal opportunity to participate in the performance of all City  
23 contracts.

24           Section 12. Approval of the Official Statement in Preliminary and Final Form. The form  
25 of an official statement relating to the Certificates (the "Official Statement"), as presented to

1 this Board, a copy of which is on file in preliminary form with the Clerk, is hereby approved.  
2 The Director is hereby authorized to approve the distribution of the preliminary Official  
3 Statement in substantially said form, with such changes, additions, modifications or deletions  
4 as the Director may approve upon consultation with the City Attorney; such approval to be  
5 conclusively evidenced by the distribution of the preliminary Official Statement to potential  
6 bidders for or purchasers of the Certificates. The Controller of the City or his designee  
7 (collectively, the "Controller") is hereby authorized to cause the distribution of the Preliminary  
8 Official Statement, deemed final for purposes of Rule 15c2-12 of the Securities and Exchange  
9 Act of 1934, as amended, and to execute a certificate to that effect. The Controller is hereby  
10 further authorized and directed to sign the Official Statement in final form. The Controller or  
11 the Director are hereby authorized to direct the Co-Financial Advisors to cause to be printed  
12 and mailed, or distributed electronically, to prospective bidders, copies of the Preliminary  
13 Official Statement and the final Official Statement.

14 Section 13. Approval of the Continuing Disclosure Certificate. The form of a  
15 Continuing Disclosure Certificate of the City, as presented to this Board, a copy of which is on  
16 file with the Clerk of the Board, is hereby approved. The Controller is hereby authorized to  
17 execute the Continuing Disclosure Certificate, with such changes, additions, modifications or  
18 deletions as the Controller may approve upon consultation with the City Attorney; such  
19 approval to be conclusively evidenced by the execution and delivery of the Continuing  
20 Disclosure Certificate.

21 Section 14. General Authority. The Mayor, the City Attorney, the Controller, the City  
22 Administrator, the Director, the Clerk of the Board and other officers of the City and their duly  
23 authorized deputies and agents are hereby authorized and directed, jointly and severally, to  
24 take such actions and to execute and deliver such certificates, agreements, requests or other  
25 documents as they may deem necessary or desirable to accomplish the proposed financing

1 through the execution and delivery of the Certificates, the Official Statement and the  
2 Continuing Disclosure Certificate, and to enter into the Second Supplement to Trust  
3 Agreement, the Second Supplement to Property Lease, the Second Supplement to Project  
4 Lease and the Purchase Contract, to facilitate the execution and delivery of the Certificates, to  
5 prepare and deliver or cause to be prepared and delivered such certificates and documents  
6 necessary in connection with the Build America Bonds, including any elections or  
7 determinations required in connection therewith, to obtain bond insurance or other credit  
8 enhancements with respect to the financing of the Project, to obtain title insurance, clear any  
9 encumbrances to title, survey property and carry out other title work and otherwise to carry out  
10 the provisions of this Ordinance.

11 Section 15. Modifications, Changes and Additions. The Mayor and Controller is each  
12 hereby authorized to approve and make such modifications, changes or additions to the  
13 Second Supplement to Trust Agreement, the Second Supplement to Property Lease, the  
14 Second Supplement to Project Lease, the Continuing Disclosure Certificate or the Purchase  
15 Contract, upon consultation with the City Attorney, as may be necessary or desirable in the  
16 interests of the City, and which changes do not materially increase the obligations of the City  
17 under the Second Supplement to Trust Agreement, the Second Supplement to Property  
18 Lease, the Second Supplement to Project Lease, the Continuing Disclosure Certificate or the  
19 Purchase Contract. The Mayor's or Controller's approval of such modifications, changes or  
20 additions shall be conclusively evidenced by the execution and delivery by the Mayor and the  
21 Clerk of the Board or the Controller, as the case may be, of the Second Supplement to Trust  
22 Agreement, the Second Supplement to Property Lease, the Second Supplement to Project  
23 Lease, the Continuing Disclosure Certificate and the Purchase Contract.

24 ///  
25 ///

1           Section 16. Ratification of Prior Actions. All actions authorized and directed by this  
2 Ordinance and heretofore taken are hereby ratified, approved and confirmed by this Board.

3  
4 APPROVED AS TO FORM:

5 DENNIS J. HERRERA, City Attorney

6  
7 By:

*Kenneth David Roux*  
8 KENNETH DAVID ROUX  
Deputy City Attorney

LEGISLATIVE DIGEST

[Taxable and/or Tax Exempt Certificates of Participation for Various Capital Improvements.]

**Ordinance authorizing the execution and delivery of Certificates of Participation in an aggregate principal amount not to exceed \$48,000,000 to finance the acquisition, construction, improvement and installation of certain street improvements and of various disability access improvement projects; approving the form of a Second Supplement to Trust Agreement between the City and County of San Francisco and the Trustee named therein (including certain indemnities contained therein); approving the form of a Second Supplement to Property Lease between the City, as lessor, and the Trustee, as lessee; approving the form of a Second Supplement to Project Lease between the Trustee, as lessor, and the City, as lessee; approving the form of an Official Notice of Sale and Notice of Intention to Sell for the Certificates of Participation, if sold by competitive sale; authorizing certain actions relating to the Certificates of Participation, if sold by negotiated sale; delegating to the Director of Public Finance the authority to sell the Certificates of Participation by either a competitive or negotiated sale; approving the form of a Purchase Contract between the City and the underwriter(s) selected in accordance herewith, if the Certificates of Participation are sold by negotiated sale; approving the form of an official statement in preliminary and final form; approving the form of a Continuing Disclosure Certificate; granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of the Certificates of Participation; approving modifications to documents; and ratifying previous actions taken in connection therewith.**

Existing Law

This is new legislation.

Amendments to Current Law

Not applicable.

Background Information

Ordinance approving the form and authorizing the execution and delivery of certificates of participation to finance the acquisition, construction, improvement and installation of certain street improvements and of various disability access improvement projects. In connection with the execution and delivery of these certificates of participation, the Ordinance provides for the approval of the following agreements and documents: a form of Second Supplement to Trust Agreement, a form of Second Supplement to Property Lease, a form of Second Supplement to Project Lease, a form of an Official Notice of Sale and Notice of Intention to Sell, a form of Bond Purchase Contract, a form of preliminary Official Statement, and other

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documents necessary for the execution and delivery and sale of the certificates of participation. The Ordinance also delegates to the Director of Finance the authority to sell the certificates of participation by either a competitive or negotiated sale.



**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
 (S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: U.S. Bank, National Association	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Please see attachment	
Contractor address: One California Street, Suite 2100, San Francisco, CA 94111, Attn: Corporate Trust Services	
Date that contract was approved:	Amount of contract: \$1,000
Describe the nature of the contract that was approved: The subject contract is the Second Supplement to Trust Agreement with U.S. Bank National Association as Trustee. The form of original Trust Agreement was approved by the Board in resolution no. 351-08.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: <a href="mailto:bos.legislation@sfgov.org">bos.legislation@sfgov.org</a>

\_\_\_\_\_  
 Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
 Date Signed

## Attachment to Form SFEC-126: Notification of Contract Approval

*Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.*

(1)

Richard K. Davis  
Douglas M. Baker, Jr.  
Y. Marc Belton  
Victoria Buyniski Gluckman  
Arthur D. Collins, Jr.  
Joel W. Johnson  
Olivia F. Kirtley  
Jerry W. Levin  
David B. O'Maley  
O'dell M. Owens  
Richard G. Reiten  
Craig D. Schnuck  
Patrick T. Stokes

(2)

Richard K. Davis, CEO  
Andrew Cecere, CFO  
Vacant, COO

(3)

Publicly traded company

(4)

None

(5)

N/A

<b>Item 9</b> <b>File 10-1159</b>	<b>Department(s):</b> Controller's Office of Public Finance (OPF), Department of Public Works (DPW), and Mayor's Office on Disability (MOD)
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**EXECUTIVE SUMMARY****Legislative Objective**

- The proposed ordinance would (a) authorize the issuance of Certificates of Participation (COPs) in a not-to-exceed amount of \$48,000,000, to finance (a) various street improvement projects, and (b) disability access improvements to the Board of Supervisors legislative chamber.

**Key Points**

- The proposed not-to-exceed \$48,000,000 issuance of COPs would finance (a) \$38,364,935 in street improvement projects, (b) \$600,000 for disability access improvements to the Board of Supervisors legislative chamber, (c) \$7,875,065 for costs of financing, and (d) \$1,160,000 in order to allow for market fluctuations between the time of approval and the anticipated issuance date of January of 2011.
- Although the proposed \$38,364,935 in street improvement projects would extend the life of specific streets by 7 to 50 years, the Budget and Legislative Analyst considers such street improvement projects to be routine and ongoing when considering the entirety of the City's street system, and therefore finds that such projects would be most appropriately financed on a pay-as-you-go basis without the issuance of long-term debt such as COPs. Should an ongoing revenue source not be available to finance ongoing street improvement projects on a pay-as-you-go basis, the issuance of General Obligation Bonds would be more preferable than issuing of Certificates of Participation because payment of COP debt service results in reductions to the City's discretionary budget, with no corresponding increased revenues to the City, in contrast to General Obligation Bonds which are financed from increased Property Taxes in an amount sufficient to cover the resulting debt service.
- The Budget and Legislative Analyst notes that long term debt, including General Obligation Bonds and Certificates of Participation, is typically issued to finance large one-time capital improvement projects such as (a) the construction of new City buildings, (b) the acquisition of new equipment, or (c) the significant remodeling of existing assets such as Laguna Honda Hospital or San Francisco General Hospital, and that long term debt, including Certificates of Participation, is not typically issued for projects which are routine and/or ongoing in nature and which simply extend the life of existing assets.
- However, on April 28, 2009, the Board of Supervisors (File 09-0404) previously approved the issuance of \$42,000,000 in COPs to finance various similar ongoing and routine street improvement projects including street repaving, maintenance, and repairs. Additionally, the Board of Supervisors previously appropriated the \$38,364,935 in proceeds from the proposed COPs in DPW's FY 2010-2011 budget. Therefore, the Budget and Legislative Analyst considers approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

- The proposed COP issuance includes \$600,000 for disability access improvements to the Board of Supervisors legislative chamber. The Mayor's Office on Disability (MOD) is still finalizing the cost estimates for such improvements, such that if the cost estimate is reduced (as is anticipated by MOD), the amount of required COPs could be reduced. The \$600,000 in proposed COP proceeds to fund disability access improvements would be subject to separate future appropriation by the Board of Supervisors.

#### **Fiscal Impact**

- The proposed COPs are estimated to have an interest rate of 6.5 percent and average annual debt service of approximately \$3,976,000, for a total debt service over 20 years of \$85,785,000 including (a) interest payments of \$38,945,000 and (b) principal payments of \$46,840,000.
- Debt service payments will be paid with General Fund revenues appropriated annually by the Board of Supervisors, thereby reducing the City's discretionary budget by an average of \$3,976,000 per year.
- The Budget and Legislative Analyst notes that debt service for COPs results in reductions to the City's discretionary budget because, in contrast to General Obligation Bonds, which are financed from increased Property Taxes in an amount sufficient to cover the resulting debt service, the issuance of COPs does not result in any increased revenues to the City.

#### **Recommendation**

- Approval of the proposed ordinance is a policy decision for the Board of Supervisors because the proposed street improvement projects include projects which the Budget and Legislative Analyst considers to be projects of an ongoing and/or routine nature, which should be financed from a regularly recurring revenue source instead of issuing long term debt financing such as Certificates of Participation.

## **MANDATE STATEMENT & BACKGROUND**

### **Mandate Statement**

According to San Francisco Charter Section 9.118, any lease with a term of over ten years or expenditures of over \$10,000,000 is subject to approval by the Board of Supervisors. The proposed issuance of \$48,000,000 of COPs requires the City to enter into a lease which exceeds ten years and \$10,000,000, due to the asset transfer model described in the Background Section below.

### **Background**

According to Ms. Nadia Sesay, Director of the Controller's Office of Public Finance, Certificates of Participation (COPs) are a form of long term debt which are sold to investors in consideration for a portion of the lease revenues from a specific City-owned property, such that the investors "participate" in lease revenues. Under a typical COP structure, the City leases a City-owned

property to a trustee in consideration for a one-time rent payment from the trustee to the City that is equal to the proceeds from the issuance of such COPs. The trustee subsequently subleases the same City-owned property back to the City in return for semi-annual rent payments equal to the debt service (including principal and interest) due on the COPs. This lease-sublease structure is known as an asset transfer model. Under such an asset transfer model, the City-owned property leased to the trustee serves as collateral to the trustee on the issued COPs.

After the COPs are fully repaid by the City, the City-owned property, previously leased to the trustee, reverts back to the City.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would authorize the issuance of Certificates of Participation (COPs) in a not-to-exceed amount of \$48,000,000, to finance (a) various street improvement projects, and (b) disability access improvements to the Board of Supervisors legislative chamber.

Ms. Sesay anticipates issuing the not-to-exceed \$48,000,000 COPs in January of 2011. According to Ms. Sesay, the current estimated amount of COPs to be issued is \$46,840,000, or \$1,160,000 less than the proposed not-to-exceed amount of \$48,000,000. Ms. Sesay noted that the requested excess amount of \$1,160,000 provides sufficient additional funds for potential market fluctuations between the time of approval of the COPs and the anticipated COP issuance date of January of 2011.

As shown in Table 1 below, the estimated issuance of \$46,840,000 in COPs would fund (a) \$38,964,935 in project costs, and (b) \$7,875,065 in financing costs.

**Table 1: Uses of COPs Proceeds**

<b>Project Costs</b>	
<b>Street Improvement Project Costs</b>	
Curb Ramps	\$6,458,100
Sidewalk Repair	1,500,000
Street Structures	2,000,000
Bridge Preventive Maintenance Program	787,068
Street Resurfacing	27,619,767
<b>Subtotal Street Project Costs</b>	<b>\$38,364,935</b>
Disability Access Improvements to the Board of Supervisors Legislative Chamber	600,000
<b>Subtotal Project Costs</b>	<b>\$38,964,935</b>
<b>Financing Costs</b>	
Debt Service Reserve Fund	4,253,550
Capitalized Interest <sup>1</sup>	2,283,450
Costs of Issuance	401,265
Underwriter's Discount	936,800
<b>Subtotal</b>	<b>\$7,875,065</b>
<b>Total Project and Financing Costs</b>	<b>\$46,840,000</b>

**Street Improvement Projects**

As shown in Table 1 above, the anticipated issuance of \$46,840,000 in Certificates of Participation would finance \$38,364,935 in street improvement projects. Attachment I provided by the Department of Public Works identifies the specific street improvement projects totaling \$38,364,935 to be funded by the proposed issuance of COPs (see Policy Consideration Section below).

According to Ms. Sesay, the proceeds from the proposed COPs totaling \$38,364,935 for street improvement projects were appropriated to DPW by the Board of Supervisors in DPW's FY 2010-2011 budget.

**Disability Access Improvements to the Board of Supervisors Legislative Chamber**

As also shown in Table 1 above, the anticipated issuance of \$46,840,000 in Certificates of Participation includes \$600,000 for disability access improvements to the Board of Supervisors

<sup>1</sup> According to Ms. Sesay, due to budget constraints in FY 2010-2011 and anticipated budget constraints in FY 2011-2012, \$2,283,450 of the proposed issuance of \$46,840,000 in COPs would be set aside to create a Capitalized Interest fund, from which interest-only debt service payments will be made until October of 2011, assuming the issuance takes place as anticipated in January of 2011. After October of 2011 when the Capitalized Interest fund (initially funded from the proceeds of the proposed COP issuance) is depleted, the City will use ongoing General Fund appropriations to make interest and principal debt service payments through the term of the COPs.

Legislative Chamber. According to Ms. Susan Mizner, Director of the Mayor's Office on Disability, such disability access improvements include (a) lowering the Clerk's podium to floor level, (b) lowering the President of the Board's podium such that it is 12 inches above the floor, (c) installing a ramp to the President's podium, and (d) upgrading the audio/visual wiring that runs underneath each podium. The Historic Preservation Committee's certificate of appropriateness, which states that the design of the proposed improvements would not impair the historic nature of the Board of Supervisors Legislative Chamber, was approved by the Board of Supervisors in File 10-1183 on September 28, 2010.

According to Ms. Mizner, the proposed \$600,000 in COP proceeds for disability access improvements to the Board of Supervisors Legislative Chamber have not yet been appropriated by the Board of Supervisors. Ms. Mizner anticipates submitting a supplemental appropriation ordinance to the Board of Supervisors for approval in November of 2010.

Ms. Mizner noted that the current estimated cost for disability access improvements to the Board of Supervisors Legislative Chamber of \$600,000 is based on conservative assumptions. DPW is currently revising the cost estimate and anticipates that the revised cost estimate will be less than \$600,000. According to Ms. Sesay, should the cost estimate for the disability improvements be reduced, the issuance of COPs would be reduced by the same amount.

## FISCAL IMPACTS

### Financing Agreements and Structure

The proposed not-to-exceed \$48,000,000 issuance of COPs would use Laguna Honda Hospital as the City-owned property to be leased to the trustee under the asset transfer model described above. The Board of Supervisors previously approved \$227,000,000 in COPs using Laguna Honda Hospital as collateral, including (a) \$185,000,000 in 2008 for the renovation of Laguna Honda Hospital (File 08-0760), and (b) \$42,000,000 in 2009 for various street improvement projects (File 09-0404). The proposed ordinance would approve supplements to the existing Trust Agreement and Project Lease<sup>2</sup> pertaining to Laguna Honda Hospital to allow for the proposed issuance of \$48,000,000 in COPs which would also use Laguna Honda Hospital as collateral to the trustee on the issued COPs.

According to Mr. John Updike, Assistant Director of the Real Estate Division, the Laguna Honda Hospital has an approximate value of \$575,000,000<sup>3</sup>, and is sufficient to support the combined \$275,000,000 (\$227,000,000 in previously authorized COPs plus the proposed \$48,000,000) of existing and proposed COP debt.

<sup>2</sup> According to Ms. Sesay, the Trustee Agreement and Project Lease for Laguna Honda Hospital act as the lease and sublease described above in the discussion of the asset transfer model.

<sup>3</sup> According to Mr. Updike, this estimate of \$575,000,000 includes (a) the approximate value of the land of \$150,000,000 and (b) the approximate cost of the improvements of \$425,000,000. Mr. Updike advised that it is difficult to estimate the precise market value of Laguna Honda Hospital due to lack of comparable properties.

The proposed resolution would also provide the Director of Finance with the discretionary authority to (a) sell any portion of the proposed COPs through either a negotiated or competitive sale, and (b) sell any portion of the proposed COPs as Federally Taxable Build America Bonds. Typically, the City sells COPs, which are exempt from Federal Income Taxes. However, under provisions of the Federal American Recovery and Reinvestment Act of 2009, a new category of taxable bonds were created called Build America Bonds. In accordance with the sale of Build America Bonds, the Federal government pays the City an amount equal to the Federal Income Taxes payable by the investor for received interest income. Ms. Sesay stated that there are some unique risks associated with the sale of the Build America Bonds, such as (a) whether the Build America Bond program might be altered or repealed in the future by Congress and (b) the timeliness of payments by the Federal government to the City of the Federal Income Taxes which the Federal Government received from the bondholder. Therefore, the proposed resolution provides the Director of Public Finance with the discretionary authority to sell the proposed COPs as Federally Taxable Build America Bonds if such a sale is considered to be in the best interest of the City.

In addition, the proposed ordinance would (a) approve the form of a Second Supplement to the existing Trust Agreement pertaining to Laguna Honda Hospital between the City and County of San Francisco and U.S. Bank National Association, as the Trustee, (b) approve the form of a Second Supplement to the Property Lease between the City as lessor and the Trustee as lessee, (c) approve the form of a Second Supplement to the Property Lease between the Trustee as lessor and the City as lessee; (d) approve the form of an Official Notice of Sale and Notice of Intention to Sell for the COPs, if sold by competitive sale, (e) authorize certain actions related to the COPs, if sold by negotiated sale, (f) delegate the Director of Public Finance the authority to sell the COPs by either competitive or negotiated sale, (g) approve the form of a Purchase Contract between the City and the underwriters selected, if the COPs are sold by negotiated sale, (h) approve the form of an official statement in preliminary and final form, and (i) approve the form of a Continuing Disclosure Certificate.

### Anticipated Debt Service and Total Costs

Ms. Sesay anticipates that the proposed \$46,840,000 in COPs will have an estimated annual interest rate of 6.5 percent and average annual debt service of approximately \$3,976,000, for a total debt service over 20 years of \$85,785,000<sup>4</sup> including (a) interest payments of \$38,945,000 and (b) principal payments of \$46,840,000.

Ms. Sesay stated that the \$3,976,000 average annual debt service payments would be paid over the next 20 years with General Fund revenues appropriated annually by the Board of Supervisors, thereby reducing the City's discretionary budget by an average of \$3,976,000 per year. The Budget and Legislative Analyst notes that debt service for COPs results in reductions to the City's discretionary budget because, in contrast to General Obligation Bonds which are financed from increased Property Taxes in an amount sufficient to cover the resulting debt service, the issuance of COPs does not result in any increased revenues to the City.

<sup>4</sup> According to Ms. Sesay, the average annual debt service of \$3,976,000 does not equal the total debt service of \$85,785,000 divided by 20 years because the average does not include interest only debt service payments made from the capitalized interest fund.



**POLICY CONSIDERATION**

**The proposed ordinance would authorize the issuance of long term debt to fund ongoing or routine street repairs in contrast to the one-time capital improvement projects which are typically financed with long term debt, such as such as (a) the construction of new City buildings, (b) the acquisition of new equipment, or (c) the significant remodeling of existing assets such as Laguna Honda Hospital or San Francisco General Hospital.**

As shown in Attachment I, the proposed street improvement projects include \$38,964,935 of street repaving, maintenance, and repair projects. According to Ms. Simone Jacques, Transportation Finance Analyst at DPW, and as further explained by Ms. Jacques in Attachment II, DPW considers that all of the proposed street improvement projects are capital improvement projects, and are not ongoing or routine maintenance. Ms. Jacques states that the proposed street improvement projects will result in increasing the life of the specific streets to be improved under the street projects shown on Attachment I by between 7 and 50 years. Ms. Jacques also noted that DPW maintains a separate fund, financed through annual appropriations of State Gas Tax revenues and General Fund monies, without issuing debt, to provide for ongoing and routine street maintenance for the repair of street potholes and street crack filling.

Although the proposed street projects included in Attachment I, which are to be funded through the proposed issuance of COPs, are not considered by DPW to be ongoing or routine maintenance projects for the specific streets shown on Attachment I, the Budget and Legislative Analyst notes that the same types of projects will likely be required for other streets which are not included in Attachment I in future years. The Budget and Legislative Analyst notes that less than two years ago, on April 28, 2009, the Board of Supervisors (File 09-0404) approved the issuance of \$42,000,000 in COPs to finance the exact same categories of street improvement projects which are now included in the proposed \$48,000,000 COPs issuance, with the only difference being the specific streets and locations of those projects.

The Budget and Legislative Analyst considers the proposed street projects listed in Attachment I to be routine and ongoing when considering the entirety of the City's street system, and therefore finds that such projects would be most appropriately financed on a pay-as-you-go basis without the issuance of long-term debt such as COPs.

Should an ongoing revenue source not be available to finance ongoing street improvement projects on a pay-as-you-go basis, and it is the policy determination of the Board of Supervisors to issue long term debt to finance such ongoing and routine street improvement projects, then, in the professional judgment of the Budget and Legislative Analyst, the issuance of General Obligation Bonds would be more preferable than issuing of Certificates of Participation because, as discussed above, debt service for COPs results in reductions to the City's discretionary budget, with no corresponding increased revenues to the City, in contrast to General Obligation Bonds which are financed from increased Property Taxes in an amount sufficient to cover the resulting debt service.

The Budget and Legislative Analyst further notes that long term debt, including General Obligation Bonds and Certificates of Participation, is typically issued to finance large one-time capital improvement projects such as (a) the construction of new City buildings, (b) the acquisition of new equipment, or (c) the significant remodeling of existing assets such as Laguna Honda Hospital or San Francisco General Hospital, and that long term debt, including Certificates of Participation, is not typically issued for projects which are routine and/or ongoing in nature and which simply extend the life of existing assets.

However, as noted above, on April 28, 2009, the Board of Supervisors (File 09-0404) previously approved the issuance of \$42,000,000 in COPs to finance various similar ongoing and routine street improvement projects including street repaving, maintenance, and repairs. Additionally, as noted above, the Board of Supervisors previously appropriated the proceeds from the proposed COPs to DPW in DPW's FY 2010-2011 budget. Therefore, the Budget and Legislative Analyst considers approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

## RECOMMENDATION

Approval of the proposed ordinance is a policy decision for the Board of Supervisors because the proposed street improvement projects include projects which the Budget and Legislative Analyst considers to be projects of an ongoing and/or routine nature, which should be financed from a regularly recurring revenue source instead of issuing long term debt financing such as Certificates of Participation.

	FY 2010-11				FY 2011-12					
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
MOD Curb Ramps										
\$6,458,100										
Design		388,025	388,025	388,025	1,164,075	388,025	388,025	388,025	388,025	1,552,100
Construction		658,000	1,000,000	1,000,000	2,658,000	1,000,000	1,000,000	1,000,000	2,000,000	4,658,000
Capital Upgrades		62,500	62,500	62,500	187,500	62,500	62,500	62,500	62,500	250,000
Total		1,008,525	1,450,525	1,450,525	3,909,575	1,450,525	1,450,525	1,450,525	1,450,525	4,351,575

	FY 2010-11				FY 2011-12					
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Sidewalks										
\$1,500,000										
Sidewalk Repairs (DPW Construction); amount to set encumbrance			308,250	308,250	616,500	308,250	308,250	308,250	308,250	1,225,000
Sidewalk Repairs (DPW Construction); amount to set encumbrance			68,750	68,750	137,500	68,750	68,750	68,750	68,750	275,000
Total			377,000	377,000	754,000	377,000	377,000	377,000	377,000	1,500,000

	FY 2010-11				FY 2011-12					
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Street Structures										
\$2,000,000										
Opalo Lane Stairway (#259)		65,000			65,000					65,000
Roosevelt Way Wall and Stair Repair (#154g)		75,500			75,500					75,500
Castro Street Stair Repair (#162)		24,000			24,000					24,000
Castro Street Stair Concrete Guardrail Repair (#162)		40,000			40,000					40,000
Detroit Street Stair Repair (#114)		35,000			35,000					35,000
Upper Market Street Structure Repair (#220D)		28,500			28,500					28,500
San Jose Ave Wall and Stair Repair (#92)		30,000			30,000					30,000
James Street Retaining Wall Repair (#65)		16,000			16,000					16,000
Greenwich Street Stairway Repair (#289)		46,500			46,500					46,500
Alamny Blvd Retaining Wall Construction (#320)		88,500			88,500					88,500
3rd Street Bridge Deck bolt replacement (#174)		66,667			66,667					66,667
Green Street Wall and Stair Repair (#28)										
Fillbert Street Stairway Repair (#318)										
Chastnut Street Stairway Repair (#18)			85,000		85,000					85,000
Duncan Street Wall and Stairs Replacement (#140)			147,500		147,500					147,500
Bishop Street Retaining Wall Repair (#321)			120,000		120,000					120,000
Various Location Concrete (Uneven Surfaces) Repair		36,667			36,667					36,667
Various Location Concrete (Crack and Spall) Repair		18,333			18,333					18,333
Various Location Metal Railing Repair		36,667			36,667					36,667
Various Location Painting		18,333			18,333					18,333
Various Location Lighting Repair		11,000			11,000					11,000
Total		636,667			636,667					636,667

	FY 2010-11				FY 2011-12					
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Bridge Preventive Maintenance Program										
\$787,068										
Lincoln Way Separation		81,833			81,833					81,833
Hillmore Street		14,389			14,389					14,389
Harrison Street		14,389			14,389					14,389
Sidell Viaduct		14,389			14,389					14,389
Market Street Viaduct			23,800		23,800					23,800
Market Street Viaduct 1			47,260		47,260					47,260
Market Street Viaduct 2			23,630		23,630					23,630
Market Street Viaduct 3-4			91,740		91,740					91,740
Hyde Street (over Broadway)			126,490		126,490					126,490
Mason Street (over Broadway)			76,450		76,450					76,450
L-Line (Polara overcrossing)			33,360		33,360					33,360
Total		164,600	236,300		400,900					400,900

Projects	FY 2010-11				FY 2011-12				Total
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Richard (over San Jose)		8,340		8,340		8,340		8,340	8,340
Highland (over San Jose)		141,780		141,780		141,780		141,780	141,780
		65,588		65,588		65,588		65,588	65,588
<b>Total</b>		125,000		125,000		125,000		125,000	125,000
<b>Street Resurfacing Program</b>									
<b>\$27,619,767</b>									
<b>Projects</b>									
Cabrillo - 25th to 45th		\$129,200		\$129,200		\$129,200		\$129,200	\$129,200
Marina Blvd - Laguna to Scott		\$119,100		\$119,100		\$119,100		\$119,100	\$119,100
Lyon St. - Green to Bay		\$117,500		\$117,500		\$117,500		\$117,500	\$117,500
Columbus Ave. - Union to Leavenworth St.		\$20,800		\$20,800		\$20,800		\$20,800	\$20,800
Broadway Joint Paving Streetscape - Battery to Kerry		\$174,800		\$174,800		\$174,800		\$174,800	\$174,800
Shawmut - Geary to Mountain Spring		\$64,500		\$64,500		\$64,500		\$64,500	\$64,500
Guerrero - Laguna to 19th		\$38,200		\$38,200		\$38,200		\$38,200	\$38,200
Silver Ave. - Bayshore to Palou		\$55,600		\$55,600		\$55,600		\$55,600	\$55,600
Lawton St. Pavement Renovation - 28th Ave. to 45th Ave.		\$59,400		\$59,400		\$59,400		\$59,400	\$59,400
Water Department Joint Projects		\$45,000		\$45,000		\$45,000		\$45,000	\$45,000
BSSR Various Locations		\$497,500		\$497,500		\$497,500		\$497,500	\$497,500
Various Locations Slurry Sealing Contract (10-1)		\$200,000		\$200,000		\$200,000		\$200,000	\$200,000
V/L Joint Puc Paving		\$229,000		\$229,000		\$229,000		\$229,000	\$229,000
Market Street Design		\$50,000		\$50,000		\$50,000		\$50,000	\$50,000
Newcomb - Phelps to Newhall		\$50,000		\$50,000		\$50,000		\$50,000	\$50,000
<b>Total</b>		\$1,745,000		\$1,745,000		\$1,745,000		\$1,745,000	\$1,745,000

Grand Total \$ 38,364,935

City and County of San Francisco



Gavin Newsom, Mayor  
Edward D. Reiskin, Director

Attachment II




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Department of Public Works  
Office of the Director  
City Hall, Room 348  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4645

MEMORANDUM

To: Nathan Cruz  
Budget and Legislative Analyst's Office  
San Francisco Board of Supervisors

From: Simone Jacques   
Transportation Finance Analyst  
Department of Public Works

RE: COP Financing of DPW Capital Right-of-Way Projects

The Department of Public Works (DPW) proposes to use Certificates of Participation (COP) financing for right-of-way capital projects including resurfacing and reconstruction of roadways, construction of curb ramps, construction and rehabilitation of street structures, and reconstruction of sidewalks. These projects will be managed by DPW's Bureau of Engineering. All of the work being proposed is capital in nature and will a) bring the asset to useful condition and b) prolong the life of the asset. DPW estimates that the useful lives of the assets will be extended between 7 and 50 years depending on the street, structure, or facility; and many of the repairs will live beyond the term of debt repayment.

The proposed improvements are not ongoing or routine maintenance. Our primary street maintenance activities are pothole repair and patch paving which not extend the life of the street. This routine maintenance work is completed by the DPW Bureau of Street and Sewer Repair using the City's allocation of State gas tax funding and a CIP facilities maintenance appropriation for pothole repair. DPW will not perform any routine maintenance using COP funds.





**CITY AND COUNTY OF SAN FRANCISCO**  
**OFFICE OF THE CONTROLLER**


**Ben Rosenfield**  
**Controller**

**Monique Zmuda**  
**Deputy Controller**

**Nadia Sesay**  
**Director**  
**Office of Public Finance**

**MEMORANDUM**

**TO:** Honorable Members, Board of Supervisors

**FROM:** Nadia Sesay, Director of Public Finance 

**SUBJECT:** Ordinance Authorizing the Sale of City and County of San Francisco Certificates of Participation (Multiple Capital Improvement Projects)

**DATE:** September 13, 2010

Approval of the Ordinance would authorize the City to issue not to exceed aggregate par amount of \$48,000,000 in City and County of San Francisco Certificates of Participation (Multiple Capital Improvement Projects), Series 2011A (the "Certificates") to finance capital improvements to various City streets and to finance various disability access improvement projects (the "Projects"). The City anticipates issuing the Certificates in January 2011.

**Background:**

The Board of Supervisors adopted on July 29, 2008 and the Mayor approved on August 5, 2008 Resolution No. 351-08 which authorized the City to issue up to \$185,000,000 in City and County of San Francisco Certificates of Participation Series 2009A (the "2009A Certificates" or the "Laguna Honda Hospital Project") to partially finance the acquisition, demolition, improvement, installation, equipping, rehabilitation, construction, and/or reconstruction of a health care, assisted living and/or other type of continuing care facility.

Resolution No. 351-08 also approved the form of a property lease between the City and the trustee providing for the lease of a portion of the City-owned Laguna Honda Hospital campus located at 375 Laguna Honda Boulevard (the "Leased Property") and the form of a project lease providing for the financing of the Laguna Honda Hospital Project. The 2009A Certificates were issued in April 2009.

The Board of Supervisors adopted on April 28, 2009 and the Mayor approved on May 5, 2009, Ordinance 74-09 that authorized the execution and delivery of certificates (the "2009B Certificates") in an aggregate principal amount not to exceed \$42,000,000 to finance the acquisition, construction, improvement and installation of certain street improvements pursuant to first supplements to the security documents (i.e. the project lease, property lease, and trust

agreement) the forms of which were approved by the Board in Ordinance No. 74-09. The 2009B Certificates were issued in September 2009.

Under the proposed Ordinance, the City will structure the transaction financing street improvements as an asset-transfer lease supplement to the 2009A Certificates, as permitted by the security documents (i.e. the property lease, project lease, and trust agreement) the forms of which were authorized by the Board in Resolution No. 351-08. It is anticipated that the City-owned Laguna Honda Hospital campus located at 375 Laguna Honda Boulevard (the "Leased Property") will serve as the Leased Property for the Certificates.

The second supplement to property lease and second supplement to project lease between the City and U.S. Bank National Association, as trustee, requires the City to make base rental payments on each September 25 and March 25 during the term of the supplemental leases, commencing on March 25, 2011 and semi-annually thereafter, in an amount sufficient to pay total base rental payments when due.

The second supplement to trust agreement between the City and the trustee requires that the base rental payments be deposited in the base rental fund maintained by the trustee. On October 1 and April 1 of each year, commencing April 1, 2011 and semi-annually thereafter, the trustee will apply such amounts as is necessary to make base rental payments with respect to the Certificates.

**Current Plan of Finance:**

The proposed Ordinance authorizes the City to cause the execution and delivery of not to exceed par amount \$48,000,000 in Certificates. Based on current project cost estimates and schedules, the Office of Public Finance expects to issue \$46,840,000 under conservative assumptions of market conditions prevailing at the expected time of sale. The additional authorized amount above the expected issuance amount allows for fluctuations in market conditions from the date of authorization by the Board to the time of the sale of the Certificates.

Proceeds from the sale of the Certificates will finance capital improvements to various City streets and to finance various disability access improvement projects. Table 1 outlines anticipated sources and uses for the Certificates.

**Table 1: Estimated Sources and Uses from the Issuance of the Certificates.**

<b>Sources</b>		
<u>Par Amount</u>		<u>\$ 46,840,000</u>
<b>Total Sources</b>		<b>\$ 46,840,000</b>
 <b>Uses</b>		
Project Fund Deposit		\$ 38,964,935
Capital Street Improvements	38,364,935	
Disability Access Improvements	600,000	
Delivery Date Expenses		7,875,065
Debt Service Reserve Fund	4,253,550	
Capitalized Interest	2,283,450	
Cost of Issuance	401,265	
<u>Underwriter's Discount</u>	<u>936,800</u>	
<b>Total Uses</b>		<b>\$ 46,840,000</b>



The sale of the Certificates is tentatively scheduled for January 2011. The Office of Public Finance expects the Certificates to have a final maturity of 2031, or approximately 20 years. Based upon conservative estimates, the Office of Public Finance estimates that fiscal year net base rental payments on the Certificates average approximately \$3,976,000. The total estimated par amount of \$46,840,000 is estimated to result in approximately \$38,945,000 in interest payments over the life of the Certificates. The net base rental payments over the life of the Certificates total approximately \$83,502,000.

*The Preliminary Official Statement:* The proposed Ordinance also approves the form of Preliminary and final Official Statement relating to the Certificates (the "Official Statement"). The Official Statement has been updated to reflect the City's financial condition, including the Mayor's submission of the Proposed Budget; the Controller's release of the Revenue Letter; and the adoption by the Board and approval by the Mayor of the Original Budget. The information contained in the Appendix A to the Official Statement was updated as of August 31, 2010 and was prepared by City staff for inclusion in the Official Statement.

Federal securities laws impose on the City the obligation to ensure that its offering documents are accurate and complete in all material respects. This obligation applies to the individual members of the governing bodies approving the disclosure documents as well as City staff charged with preparing the documents. The Official Statement is attached for your approval prior to its publication.

*Method of Sale:* In connection with the execution and delivery of the Certificates, the proposed Ordinance delegates to the Director of Public Finance the authority to sell the Certificates by either a competitive or negotiated sale, subject to the Director of Public Finance's determination that a negotiated sale will result in the lowest borrowing cost to the City.

The Ordinance authorizes the sale of the Certificates by negotiated sale pursuant to a Purchase Contract, if a negotiated sale is expected to provide the lower cost of borrowing as compared to a competitive sale method. If a negotiated sale method is pursued, one or more firms from the City's pool underwriters will be selected to serve as underwriter(s) for the Certificates.

*Build America Bonds:* The City customarily issues federally tax-exempt bonds to finance its various capital improvements. Under the provisions of the American Recovery and Reinvestment Act of 2009 (the "Act"), a new category of taxable bonds was created to finance certain governmental purposes called Build America Bonds ("BABs"). BABs are a type of long-term taxable obligation that would otherwise qualify for tax exemption. Under the Act or under any other provision of the Internal Revenue Code that creates a substantially similar direct-pay subsidy program in the future, the City may elect to issue the Certificates as taxable obligations where the interest portion of payments made by the City to investors for the Certificates is taxable. On each interest payment date, the City will elect to receive payments from the federal government based upon the payments made by the City for the Certificates allocable to interest.

The City is considering the BABs in connection with the issuance of the Certificates. There are, however, legal issues/risks associated with BABs, including 1) whether the federal payments

may be reduced or repealed in the future by Congress; 2) the timeliness of federal payments vis-à-vis the City's periodic base rental payment obligations; 3) ensuring that the Project partially financed with proceeds of the Certificates are appropriate within the narrowly defined criteria of the Act and that 100% of project expenditures are capital expenditures; and 4) the ability of the Internal Revenue Service to set off the federal payments in connection with Direct Payment BABs against other unrelated claims on the City by the federal government. Based on market conditions then existing at the time of sale and consultation with the City Attorney and bond counsel of the risks identified above, the Certificates will be structured to provide the lowest cost of borrowing to the City.

**Financing Timeline:**

Schedule milestones in connection with the financing may be summarized as follows:

<u>Milestone</u>	<u>Status</u>	<u>Date*</u>
Consideration by the Capital Planning Committee	Complete	September 13, 2010
Introduction of proposed Ordinance to the Board		September 14, 2010
Closing & delivery of Certificates		January 2011

\*Please note that dates are estimated unless otherwise noted.

**Additional Information:**

The proposed Ordinance is expected to be introduced at the Board of Supervisors meeting on Tuesday, September 14, 2010. The related financing documents—including the Second Supplement to Trust Agreement, Second Supplement to Project Lease, Second Supplement to Property Lease, Preliminary Official Statement, Official Notice of Sale, Notice of Intention to Sell, Appendix A, and Purchase Contract—will also be submitted.

Your consideration of this request is greatly appreciated. Please contact me at 554-5956 if you have any questions.

- cc: Angela Calvillo, Clerk of the Board  
 Simone Jacques, Dept. of Public Works  
 Douglas Legg, Dept. of Public Works  
 Harvey Rose, Budget Analyst, with attachments  
 Ben Rosenfield, Controller  
 Starr Terrell, Mayor's Liaison  
 Greg Wagner, Mayor's Budget Director  
 Rick Wilson, Mayor's Budget Office

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**SECOND SUPPLEMENT TO TRUST AGREEMENT**

Dated as of January 1, 2011

By and between

**CITY AND COUNTY OF SAN FRANCISCO,**

and

**U.S. BANK NATIONAL ASSOCIATION,**  
*as Trustee,*

Relating to:

§ \_\_\_\_\_  
**City and County of San Francisco**  
**Certificates of Participation, Series 2011A**  
**(Multiple Capital Improvement Projects)**

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## SECOND SUPPLEMENT TO TRUST AGREEMENT

THIS SECOND SUPPLEMENT TO TRUST AGREEMENT, dated as of January 1, 2011 (this "Second Supplement to Trust Agreement"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation organized and existing under its charter and the Constitution and laws of the State of California (the "City") and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Trustee (the "Trustee");

### WITNESSETH:

WHEREAS, the City desires to provide for capital improvements to various City streets (as further defined herein, the "2011A Project"), and the City is authorized pursuant to its charter and the laws of the State to enter into lease financings for such purpose; and

WHEREAS, the City and the Trustee have previously entered into a Property Lease, dated as of May 1, 2009 (the "Original Property Lease"), pursuant to which the City has leased certain real property and all works, property, improvements, structures and fixtures thereon (collectively the "Leased Property") to the Trustee;

WHEREAS, pursuant to a Project Lease, dated as of May 1, 2009, by and between the City and the Trustee (the "Original Project Lease"), the Trustee has leased the Leased Property back to the City;

WHEREAS, in order to provide funds for certain capital improvements of the City, the Trustee executed and delivered certificates of participation captioned "\$163,335,000 City and County of San Francisco Certificates of Participation, Series 2009A (Multiple Capital Improvement Projects)" (the "2009A Certificates") under a Trust Agreement, dated as of May 1, 2009, between the City and the Trustee (the "Original Trust Agreement");

WHEREAS, the 2009A Certificates evidence direct undivided interests in the lease payments made by the City under the Original Project Lease;

WHEREAS, in order to provide funds for certain street improvements of the City, the Trustee subsequently executed and delivered a series of certificates of participation captioned "\$37,885,000 City and County of San Francisco Certificates of Participation, Series 2009B (Multiple Capital Improvement Projects)" (the "2009B Certificates") under a First Supplement to Trust Agreement dated as of September 1, 2009 (the "First Supplement to Trust Agreement");

WHEREAS, in connection with the execution and delivery of the 2009B Certificates, the City and the Trustee have previously entered into a First Supplement to Property Lease, dated as of September 1, 2009 (the "First Supplement to Property Lease"), supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2009B Project and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee simultaneously entered into a First Supplement to Project Lease, dated as of September 1, 2009, by and between the City and the Trustee (the "First Supplement to Project Lease"), supplementing the Original Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2009B Project and certain related matters;

WHEREAS, the 2009B Certificates were executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct

undivided interests in the lease payments made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease, on a parity basis with the 2009A Certificates;

WHEREAS, in order to provide funds for the 2011A Project, the Trustee is executing and delivering a series of certificates of participation captioned "\$\_\_\_\_\_ City and County of San Francisco Certificates of Participation, Series 2011A (Multiple Capital Improvement Projects)" (the "2011A Certificates") under this Second Supplement to Trust Agreement;

WHEREAS, in connection with the execution and delivery of the 2011A Certificates, the City and the Trustee are entering into a Second Supplement to Property Lease, dated as of January 1, 2011 (the "Second Supplement to Property Lease"), supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2011A Project and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee are simultaneously entering into a Second Supplement to Project Lease, dated as of January 1, 2011 (the "Second Supplement to Project Lease"), supplementing the Original Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2011A Project and certain related matters;

WHEREAS, the 2011A Certificates are being executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct undivided interests in the lease payments made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease and the Second Supplement to Project Lease, on a parity basis with the 2009A Certificates and the 2009B Certificates;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree to supplement the Original Trust Agreement as follows:

Section 1. Definitions. Capitalized terms used herein without definition shall have the meanings as set forth in the Original Trust Agreement. The defined term "Project" shall be deemed to include the 2011A Project as described in Exhibit B hereto. The following capitalized terms used herein are hereby defined as follows:

"Commercial Paper Notes" means the notes captioned "\_\_\_\_\_" issued by the City under that certain [Issuing and Paying Agent Agreement] dated as of \_\_\_\_\_, 20\_\_, by and between the City and \_\_\_\_\_, as issuing and paying agent.

"2011A Certificates" means the certificates of participation captioned "City and County of San Francisco Certificates of Participation, Series 2011A (Multiple Capital Improvement Projects)" authorized hereby and at any time Outstanding hereunder.

"2011A Costs of Issuance Account" means the account of that name established pursuant to Section 4 hereof.

"2011A Project Account" means the account of that name established pursuant to Section 5 hereof.

Section 2. Authorization, Designation and Description of the Additional Certificates. The Trustee is hereby authorized and directed to execute and deliver the 2011A Certificates as

a series of Additional Certificates to the original purchaser or purchasers thereof. The 2011A Certificates shall be designated as "City and County of San Francisco Certificates of Participation, Series 2011A (Multiple Capital Improvement Projects)" which shall be executed and delivered in the aggregate principal amount of \$\_\_\_\_\_. Each 2011A Certificate shall be executed and delivered in fully registered form and shall be numbered as determined by the Trustee. The 2011A Certificates shall be dated January \_\_\_, 2011. The 2011A Certificates shall be executed and delivered in Authorized Denominations, and shall initially be executed and delivered in book-entry form pursuant to Section 2.11 of the Original Trust Agreement.

The 2011A Certificates shall be Additional Certificates under the Original Trust Agreement delivered in accordance with Section 7.04 thereof and representing Base Rental on a parity basis with the 2009A Certificates and the 2009B Certificates.

The 2011A Certificates shall have Certificate Payment Dates of April 1 in the years and shall evidence and represent principal components in the amounts, with an interest component with respect thereto calculated on the basis of a 360-day year composed of twelve 30-day months at the rates, as follows:

Certificate Payment Date (April 1)	Principal Amount	Interest Rate
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† Term Certificates

The interest evidenced and represented by the 2011A Certificates shall be payable on April 1 and October 1 of each year, beginning on October 1, 2011, and continuing to and including their Certificate Payment Dates or on prepayment prior thereto, and shall evidence and represent the sum of the portions of the Base Rental designated as interest components coming due on such date in each year.

The principal evidenced and represented by the 2011A Certificates shall be payable on April 1 of each year, beginning on April 1, 20\_\_ and continuing to and including April 1, 20\_\_, and shall evidence and represent the sum of the portions of the Base Rental Payments designated as principal components coming due on each April 1.

The 2011A Certificates with Certificate Payment Dates of April 1, 20\_\_, and April 1, 20\_\_, shall be subject to mandatory sinking account installment prepayment as set forth in Section 7(c).

Section 3. Application of Sale Proceeds of the 2011A Certificates. Upon the Closing Date with respect to the 2011A Certificates, an amount of proceeds from the sale thereof equal to \$ \_\_\_\_\_ shall be delivered to the Trustee and deposited by the Trustee as follows:

(1) The Trustee shall deposit into the 2011A Costs of Issuance Account the sum of \$ \_\_\_\_\_. Such amount shall be held in the 2011A Costs of Issuance Account separate from any other moneys in the Costs of Issuance Fund.

(2) The Trustee shall deposit into the 2011A Reserve Account in the Reserve Fund the sum of \$ \_\_\_\_\_, representing the Reserve Requirement as applicable to the 2011A Certificates only as of the Closing Date. The 2011A Reserve Account shall only be available for payments with respect to the 2011A Certificates.

(3) The Trustee shall deposit into the 2011A Capitalized Interest Account within the Base Rental Fund the sum of \$ \_\_\_\_\_, representing capitalized interest with respect to the 2011A Certificates. The 2011A Capitalized Interest Account is hereby established to be held by the Trustee hereunder. Amounts on deposit in the 2011A Capitalized Interest Account shall be applied to the Base Rental payments allocable to the 2011A Certificates as described in the schedule below. Any amounts on deposit after October 1, 2011, in the 2011A Capitalized Interest Account, representing interest earnings, shall be expended on Base Rental allocable to the 2011A Certificates on the next available Base Rental payment date.

<u>Payment</u>	<u>Date</u>
\$ _____	April 1, 2011
\$ _____	October 1, 2011

(4) The Trustee shall deposit into the 2011A Project Account the sum of \$ \_\_\_\_\_. Such amount shall be held in the 2011A Project Account separate from any other moneys in the Project Fund and applied to fund costs of the 2011A Project in accordance with Section 5(a) below.

(5) The Trustee shall deposit into the 2011A Refunding Fund the sum of \$ \_\_\_\_\_. Such amount shall be applied to defease the outstanding Commercial Paper Notes in accordance with Section 5(b) below.

Section 4. Establishment and Application of 2011A Costs of Issuance Account. There is hereby established in trust a special account designated as the "2011A Costs of Issuance Account," which shall be held by the Trustee and which shall be kept separate and apart from all other funds and money held by the Trustee. The Trustee shall administer such account as provided herein.

There shall be deposited in the 2011A Costs of Issuance Account that portion of the proceeds of the 2011A Certificates required to be deposited therein pursuant to Section 3 hereof. The Trustee shall disburse money from the 2011A Costs of Issuance Account on such dates and in such amounts as are necessary to pay Costs of Issuance with respect to the

2011A Certificates, in each case, promptly after receipt of, and in accordance with, a Written Request of a City Representative in the form attached to the Original Trust Agreement as Exhibit B. Any amounts remaining in the 2011A Costs of Issuance Account on the earlier of the date on which a City Representative has notified the Trustee in writing that all Costs of Issuance with respect to the 2011A Certificates have been paid or the date twelve months from the Closing Date shall be transferred by the Trustee to the 2011A Project Account or such other fund or account that has been approved in writing by a City Representative, and the 2011A Costs of Issuance Account shall then be closed.

Section 5. Establishment and Application of 2011A Project Account and 2011A Refunding Fund.

(a) *2011A Project Account.* There is hereby established in trust a special account designated as the "2011A Project Account," which account shall be deemed held by the Trustee and which shall be kept separate and apart from all other funds and money held by the Trustee. The Trustee shall administer such fund as provided herein. There shall be deposited in the 2011A Project Account that portion of the proceeds of the 2011A Certificates required to be deposited therein pursuant to Section 3(4) hereof.

The Trustee shall, from time to time, disburse money from the 2011A Project Account to pay Project Costs with respect to the 2011A Project, as hereinafter provided, in each case promptly after receipt of, and in accordance with, a Written Request of the City in the form attached to the Original Trust Agreement as Exhibit C. Each officer of the City required to execute such Written Request shall have full authority to execute such Written Request without any further approval of the Board of Supervisors of the City.

In making such payments, the Trustee may rely upon the representations made in the requisition of the City therefor in the form set forth in Exhibit C to the Original Trust Agreement. If for any reason the City should decide prior to the payment of any item in said requisition not to pay such item, then it shall give written notice of such decision to the Trustee and thereupon the Trustee shall not make such payment, and the Trustee shall have no liability to the City or the designated payee as a result of such nonpayment. In no event shall the Trustee be responsible for the adequacy or the performance of any construction and similar contracts relating to the 2011A Project or for the use or application of money properly disbursed pursuant to requests made under this Section.

If, after payment by the Trustee of all requisitions theretofore tendered to the Trustee under the provisions of this Section, and delivery to the Trustee of a Written Certificate of the City to the effect that all Project Costs with respect to the 2011A Project have been paid and that the 2011A Project has been substantially completed in the form of Exhibit D to the Original Trust Agreement, there remains any balance of money in the 2011A Project Account, all money so remaining shall be transferred as directed by the City after consultation with Bond Counsel.

Notwithstanding any other provision of this Second Supplement to Trust Agreement or the Original Trust Agreement, including in particular, Section 4.16 of the Original Trust Agreement, the City may, in its sole discretion and at any time, direct the Trustee to transfer moneys on deposit in the 2011A Project Account representing investment earnings on amounts therein to the Base Rental Fund if the City determines, in its sole discretion, that such moneys will not be needed for the improvement of the 2011A Project. The Trustee shall make such transfer upon the receipt of a request executed by a City Representative directing it to make such transfer.



(b) 2011A Refunding Fund. The Trustee shall establish, maintain and hold hereunder a separate fund known as the "2011A Refunding Fund," which shall be maintained and accounted for by the Trustee so long as any moneys are on deposit therein. The moneys in the 2011A Refunding Fund shall be held by the Trustee in trust and transferred by the Trustee to \_\_\_\_\_, as issuing and paying agent (the "Issuing and Paying Agent") with respect to the Commercial Paper Notes, in connection with the defeasance of the outstanding Commercial Paper Notes, pursuant to certain irrevocable refunding instructions that will be delivered by the City to the Trustee and the Issuing and Paying Agent.

Any balance remaining in the 2011A Refunding Fund following such application of moneys shall be transferred to the 2011A Project Account, whereupon the 2011A Refunding Fund shall be closed.

Section 6. Establishment and Application of 2011A Reserve Account. The 2011A Reserve Account within the Reserve Fund is hereby established in connection with the 2011A Certificates. The 2011A Reserve Account shall only be available to support payments with respect to the 2011A Certificates.

Section 7. Prepayment of 2011A Certificates. The 2011A Certificates shall be subject to prepayment prior to their stated Certificate Payment Dates only as set forth below:

(a) Optional Prepayment of 2011A Certificates. The 2011A Certificates with a Certificate Payment Date on or after April 1, 20\_\_, are subject to optional prepayment prior to their respective Certificate Payment Dates in whole or in part on any date on or after April 1, 20\_\_, at the option of the City, in the event the City exercises its option under Section 7 of the Project Lease to prepay the principal component of the Base Rental payments, at the following prepayment prices (expressed as a percentage of the principal component to be prepaid), plus accrued interest to the date fixed for prepayment, without premium.

In the event the City gives notice to the Trustee of its intention to exercise such option, but fails to deposit with the Trustee on or prior to the prepayment date an amount equal to the prepayment price, the City will continue to pay the Base Rental payments as if no such notice were given.

(b) Sinking Account Installment Prepayment of 2011A Certificates. The 2011A Certificates with a Certificate Payment Date of April 1, 20\_\_, are subject to sinking account installment prepayment prior to their Certificate Payment Date in part, by lot, on each April 1, beginning April 1, 20\_\_, in the amounts set forth below, from scheduled payments of the principal component of Base Rental payments, at the principal amount of the 2011A Certificates to be prepaid, plus accrued interest to the prepayment date, without premium:

Prepayment Date (April 1)	Sinking Account Installment Amount
_____	_____

The 2011A Certificates with a Certificate Payment Date of April 1, 20\_\_, are subject to sinking account installment prepayment prior to their Certificate Payment Date in part, by lot, on each April 1, beginning April 1, 20\_\_, in the amounts set forth below, from scheduled payments

of the principal component of Base Rental payments, at the principal amount of 2011A Certificates to be prepaid, plus accrued interest to the prepayment date, without premium:

Prepayment Date (April 1)	Sinking Account Installment Amount
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(c) Special Prepayment of 2011A Certificates. The 2011A Certificates are subject to mandatory prepayment prior to their respective Certificate Payment Dates in whole or in part on any date, at the Prepayment Price (plus accrued but unpaid interest to the prepayment date), without premium, from amounts deposited in the Base Rental Fund pursuant to Section 4.09 or Section 4.10 of the Original Trust Agreement following an event of damage, destruction or condemnation of the Leased Property or any portion thereof or loss of the use or possession of the Leased Property or any portion thereof due to a title defect. Such mandatory prepayment of Base Rental shall be applied pro rata among all series of Certificates.

Section 8. 2011A Rebate Account. There is hereby established within the Rebate Fund a special account designated the "2011A Rebate Account," which shall be held by the Trustee and which shall be kept separate and apart from all other accounts and money held by the Trustee. Amounts received by the Trustee as Additional Rental with respect to any rebate requirement for the 2011A Certificates as set forth in written instructions of a City Representative in accordance with the provisions of the Tax Certificate shall be deposited in the 2011A Rebate Account. Amounts on deposit in the 2011A Rebate Account shall only be applied to payments made to the United States of America in accordance with written instructions of a City Representative or returned to the City as directed in writing by a City Representative.

Section 9. Original Trust Agreement Still in Effect. This Second Supplement to Trust Agreement and all the terms and provisions herein contained shall form part of the Original Trust Agreement as fully and with the same effect as if all such terms and provisions had been set forth in the Original Trust Agreement, as amended and supplemented by the First Supplement to Trust Agreement. The Original Trust Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby and by the First Supplement to Trust Agreement.

Section 10. Governing Law. This Second Supplement to Trust Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 11. Counterparts. This Second Supplement to Trust Agreement may be signed in several counterparts, each of which will constitute an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Supplement to Trust Agreement as of the date first above written.

U.S. Bank National Association, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

FORM OF CERTIFICATE OF PARTICIPATION

CITY AND COUNTY OF SAN FRANCISCO  
CERTIFICATE OF PARTICIPATION, SERIES 2011A  
(Multiple Capital Improvement Projects)

Evidencing a Proportionate Interest of the  
Owner Hereof in the Right to Receive  
Base Rental Payments to be Made by the

CITY AND COUNTY OF SAN FRANCISCO

Certificate Payment Date	Interest Rate	Original Certificate Date	CUSIP
April 1, _____		January _____, 2011	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Certificate of Participation (the "Certificate"), is the owner of a proportionate interest in the right to receive Base Rental payments payable under a Project Lease dated as of May 1, 2009, as supplemented by a First Supplement to Project Lease dated as of September 1, 2009, and as further supplemented by a Second Supplement to Project Lease dated as of January 1, 2011, (collectively, the "Project Lease"), by and between the City and County of San Francisco (the "City"), a municipal corporation, as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Project Lease and unless sooner paid in full, on the Certificate Payment Date identified above, the principal amount identified above, representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive on October 1, 2011, and on each April 1 and October 1 thereafter (each, a "Payment Date"), until payment in full of such principal sum, the registered owner's proportionate share of the Base Rental payments designated as interest coming due on or prior to each of such dates. Such proportionate share of the portion of the Base Rental designated as interest is the result of the multiplication of the aforesaid portion of the Base Rental designated as principal by the interest rate specified above. Such proportionate share of the portion of the Base Rental designated as interest shall be computed on the basis of a 360-day year composed of 12 months of 30 days each.

Interest with respect to this Certificate shall accrue from the Certificate Payment Date next preceding the date of execution hereof, unless (i) this Certificate is executed after the close of business on the 15th day of the month next preceding any Payment Date (the "Record Date") and before the close of business on the immediately following Payment Date, in which event interest shall accrue with respect hereto from such Payment Date, or (ii) this Certificate is executed on or before the Record Date immediately preceding the first Payment Date, in which event interest with respect hereto shall accrue from its Original Certificate Date set forth above; provided, however, that if at the time of execution of this Certificate, interest with respect hereto

is in default, interest with respect hereto shall accrue from the Payment Date to which interest has previously been paid or made available for payment or from its Original Certificate Date if no interest has been paid or made available for payment.

Amounts due hereunder in respect of principal and premium, if any, are payable in lawful money of the United States of America at the Principal Office of the Trustee (or any successor Trustee or paying agent). Amounts representing interest are payable by check mailed by first class mail to the owner of this Certificate at such owner's address as it appears on the registration books of the Trustee as of the Record Date, provided that the payment with respect to the Certificates to each Owner of at least \$1,000,000 aggregate principal amount of Certificates shall be made to such Owner by wire transfer to such wire address in the United States that such Owner may request in writing for all Payment Dates following the fifteenth day after the Trustee's receipt of such notice. Payments of defaulted interest, if any, with respect to this Certificate shall be paid by check to the registered owner of this Certificate as of a special record date to be fixed by the Trustee, notice of which special record date shall be given to the owner of this Certificate not less than 10 days prior thereto.

The City is authorized to enter into the Project Lease pursuant to the laws of the State. The City has entered into the Project Lease for the purpose of leasing certain facilities (the "Leased Property") in connection with the performance of the City's governmental functions.

This Certificate has been executed and delivered by the Trustee pursuant to the terms of the Trust Agreement, dated as of May 1, 2009, as supplemented by a First Supplement to Trust Agreement dated as of September 1, 2009, and as further supplemented by a Second Supplement to Trust Agreement dated as of January 1, 2011 (collectively, the "Trust Agreement"), by and between the City and the Trustee. Under the Trust Agreement, the Trustee is authorized to execute and deliver the City and County of San Francisco Certificates of Participation, Series 2011A (Multiple Capital Improvement Projects) in the aggregate principal amount of \$\_\_\_\_\_. This Certificate constitutes an Additional Certificate under the Trust Agreement delivered on parity with certain outstanding certificates of participation.

Reference is hereby made to the Project Lease and the Trust Agreement (copies of which are on file at the offices of the Trustee) for a description of the terms on which the Certificates are delivered, and the rights thereunder of the registered owners of the Certificates and the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Project Lease, to all of the provisions of which the registered owner of this Certificate, by acceptance hereof, assents and agrees.

The obligation of the City to pay Base Rental does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Base Rental does not constitute an indebtedness of the City, the State, or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction. The City's obligation to pay Base Rental shall be abated during any period in which, by reason of material damage, destruction, condemnation, noncompletion or title defect, there is substantial interference with the City's right of use and occupancy of the Leased Property or any portion thereof. Failure of the City to pay Base Rental during any such period shall not constitute a default under the Project Lease, the Trust Agreement or this Certificate.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of Certificates (as defined in

the Trust Agreement) then outstanding. The Trust Agreement may be amended without such consent under certain circumstances provided that the interests of the owners of the Certificates are not adversely affected. No amendment shall impair the right of any owner to receive in any case such owner's proportionate share of any Base Rental payment in accordance with such owner's Certificate.

Registration of this Certificate is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the aforesaid offices of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such registration of transfer a new Certificate or Certificates, of authorized denomination or denominations, for the same principal amount of Certificates (as defined in the Trust Agreement) will be issued to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and shall not be affected by any notice to the contrary.

The Certificates are subject to optional prepayment, special prepayment, and mandatory sinking account prepayment as provided in the Trust Agreement.

Notice of any prepayment shall be given to the respective owners of Certificates designated for prepayment at their addresses appearing on the registration books of the Trustee as of the close of business on the day before such notice is given. The Trustee shall give notice by first-class mail, postage prepaid, at least 30 days but not more than 45 days prior to the prepayment date. Such notice shall set forth, in the case of each Certificate to be prepaid only in part, the portion of the principal thereof which is to be prepaid. Such notice may be conditional and may be canceled as provided in the Trust Agreement. Neither failure to receive such notice nor any defect in any notice so given shall affect the sufficiency of the proceedings for the prepayment of such Certificates.

If this Certificate is called for prepayment and the principal amount of this Certificate plus accrued interest due with respect hereto are duly provided therefor as specified in the Trust Agreement, then interest shall cease to accrue with respect hereto from and after the date fixed for prepayment.

The Trustee has no obligation or liability to the Certificate owners to make payments of principal or interest with respect to the Certificates, except from amounts on deposit for such purposes with the Trustee. The Trustee's sole obligations are to administer the various funds and accounts established under the Trust Agreement in accordance therewith, and, to the extent provided in the Trust Agreement, to enforce the rights of the Trustee under the Project Lease. The Trustee has executed this Certificate solely in its capacity as Trustee under the Trust Agreement.

The recitals of fact contained herein shall be taken as those of the City and not the Trustee, and the Trustee does not warrant the accuracy of any recitals hereof.

This Certificate shall not be entitled to any benefit under the Trust Agreement or become valid for any purpose until it has been duly executed and delivered by the Trustee.

THE CITY HAS CERTIFIED, RECITED AND DECLARED that all things, conditions and acts required by the Constitution and laws of the State and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the execution and the delivery

of this Certificate, do exist, have happened and have been performed in due time, form and manner, as required by law.

Unless this Certificate is presented by an authorized representative of The Depository Trust Company to the Trustee for registration of transfer, exchange or payment, and any Certificate executed and delivered is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

DATE OF EXECUTION: January \_\_\_\_, 2011

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

### ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Certificate shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM\_as tenants in common

TEN ENT\_as tenants by the entireties

JT TEN\_as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

under Uniform Gifts to Minors Act \_\_\_\_\_  
(State)

**ADDITIONAL ABBREVIATIONS MAY ALSO BE USED  
THOUGH NOT IN THE LIST ABOVE**

### ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Certificate and hereby irrevocably constitute(s) and appoints(s) \_\_\_\_\_ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

Note: Signature(s) must be guaranteed by an eligible guarantor.



## **EXHIBIT B**

Design and construction of curb ramps, construction of sidewalk repairs, construction of street repairs and construction of improvements that are part of a street resurfacing program in the City and County of San Francisco and other related, incidental and similar capital improvements.



RECORDING REQUESTED BY:  
CITY AND COUNTY OF SAN FRANCISCO

When Recorded Mail To:  
CITY AND COUNTY OF SAN FRANCISCO  
Office of the City Attorney  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, California 94102  
Attention: Mark Blake, Esq.

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## SECOND SUPPLEMENT TO PROPERTY LEASE

Dated as of January 1, 2011

By and Between

**CITY AND COUNTY OF SAN FRANCISCO,**  
*as Lessor*

and

**U.S. BANK NATIONAL ASSOCIATION, as Trustee,**  
*as Lessee*

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NO DOCUMENTARY TRANSFER TAX DUE

This Property Lease is exempt pursuant to Section 6103  
of the California Government Code.

THIS SECOND SUPPLEMENT TO PROPERTY LEASE, dated as of January 1, 2011 (this "Second Supplement to Property Lease"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation organized and existing under its charter and the Constitution and laws of the State of California (the "City"), as lessor, and U.S. BANK NATIONAL ASSOCIATION, a national banking association, solely in its capacity as Trustee under the hereinafter defined Trust Agreement, as lessee (the "Trustee");

WITNESSETH:

WHEREAS, the City desires to provide for capital improvements to various City streets (the "2011A Project"), and the City is authorized pursuant to its charter and the laws of the State to enter into lease financings for such purpose; and

WHEREAS, the City and the Trustee have previously entered into a Property Lease, dated as of May 1, 2009, recorded in the Official Records of San Francisco on May 26, 2009, in Reel J898, Image 0416, DOC-2009-1769825-00 (the "Original Property Lease"), pursuant to which the City has leased certain real property and all works, property, improvements, structures and fixtures thereon (collectively, the "Leased Property") to the Trustee; and

WHEREAS, the City and the Trustee have previously entered into a Project Lease, dated as of May 1, 2009 (the "Original Project Lease"), under which the Trustee has leased the Leased Property back to the City;

WHEREAS, in order to provide funds for certain capital improvements of the City, the Trustee executed and delivered certificates of participation captioned "\$163,335,000 City and County of San Francisco Certificates of Participation, Series 2009A (Multiple Capital Improvement Projects)" (the "2009A Certificates") under a Trust Agreement, dated as of May 1, 2009, between the City and the Trustee (the "Original Trust Agreement");

WHEREAS, the 2009A Certificates evidence direct undivided interests in the lease payments made by the City under the Original Project Lease;

WHEREAS, in order to provide funds for certain street improvements of the City, the Trustee subsequently executed and delivered a series of certificates of participation captioned "\$37,885,000 City and County of San Francisco Certificates of Participation, Series 2009B (Multiple Capital Improvement Projects)" (the "2009B Certificates") under a First Supplement to Trust Agreement dated as of September 1, 2009 (the "First Supplement to Trust Agreement");

WHEREAS, in connection with the execution and delivery of the 2009B Certificates, pursuant to Section 5 of the Original Property Lease, the City and the Trustee have previously entered into a First Supplement to Property Lease, dated as of September 1, 2009 (the "First Supplement to Property Lease"), supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2009B Project and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee simultaneously entered into a First Supplement to Project Lease, dated as of September 1, 2009, by and between the City and the Trustee (the "First Supplement to Project Lease"), supplementing the Original Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2009B Project and certain related matters;

WHEREAS, the 2009B Certificates were executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct undivided interests in the Base Rental payments to be made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease, on a parity basis with the 2009A Certificates;

WHEREAS, in order to provide funds for the 2011A Project, the Trustee is executing and delivering a series of certificates of participation captioned "\$ \_\_\_\_\_ City and County of San Francisco Certificates of Participation, Series 2011A (Multiple Capital Improvement Projects)" (the "2011A Certificates") under a Second Supplement to Trust Agreement, dated as of January 1, 2011, by and between the City and the Trustee;

WHEREAS, in connection with the execution and delivery of the 2011A Certificates, pursuant to Section 5 of the Original Property Lease, the City and the Trustee are entering into this Second Supplement to Property Lease, supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2011A Project and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee are simultaneously entering into a Second Supplement to Project Lease, dated as of January 1, 2011 (the "Second Supplement to Project Lease"), supplementing the Original Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2011A Project and certain related matters;

WHEREAS, the 2011A Certificates are being executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct undivided interests in the lease payments made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease and the Second Supplement to Project Lease, on a parity basis with the 2009A Certificates and the 2009B Certificates;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree to supplement the Original Property Lease as follows:

Section 1. Rent. As additional consideration to the City payable under Section 5 of the Original Property Lease, the City and the Trustee hereby agree that the Trustee shall pay to the City an advance rent in the amount of the net proceeds of the 2011A Certificates as additional prepaid rental and additional rent of \$1 per year as consideration for this Second Supplement to Property Lease over its term. Such moneys are to be deposited in the Project Fund and other funds and accounts as provided in the Original Trust Agreement.

Section 2. Governing Law. This Second Supplement to Property Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 3. Counterparts. This Second Supplement to Property Lease may be signed in several counterparts, each of which will constitute an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Supplement to Property Lease as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

ACKNOWLEDGMENT

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                )

On \_\_\_\_\_ 2011, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),  
or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[Seal]

