

Amendment of the whole
In committee. 8/12/09

FILE NO. 090965

RESOLUTION NO. _____

1 [Certificates of Participation for 525 Golden Gate Avenue.]

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3 **Resolution approving the form of and authorizing the distribution of a preliminary official**
4 **statement relating to the issuance of City and County of San Francisco certificates of**
5 **participation and authorizing the preparation, execution and delivery of a final official**
6 **statement; delegating to the Director of Public Finance the authority to sell the**
7 **certificates by either a competitive or negotiated sale; authorizing the reimbursement of**
8 **prior expenditures; ratifying the approvals and terms and conditions of a previous**
9 **resolution; and related matters.**

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11 WHEREAS, Pursuant to the terms of Resolution No. 87-08, adopted by the Board of
12 Supervisors (the "Board") on February 26, 2008, and approved by the Mayor of the City on
13 February 29, 2008 (the "2008 Resolution"), the Board authorized the issuance of not to
14 exceed \$167,670,000 aggregate principal amount of its Certificates of Participation (the
15 "Certificates") for the purpose of financing the acquisition, demolition, improvement,
16 installation, equipping, rehabilitation, construction and/or reconstruction of a new San
17 Francisco Public Utilities Commission office building at 525 Golden Gate Avenue (the
18 "Project"); and,

19 WHEREAS, In the 2008 Resolution the Board approved the forms and execution and
20 delivery of documents related to the Certificates and authorized and directed the Director of
21 the Mayor's Office of Public Finance, now known as the Office of Public Finance (the
22 "Director"), to provide for the competitive sale of the Certificates using the approved forms of
23 such documents and subject to certain terms and conditions; and,

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1 WHEREAS, Among other matters, the 2008 Resolution included a provision approving
2 the form of a preliminary official statement relating to the Certificates (the "2008 Preliminary
3 Official Statement"); and,

4 WHEREAS, The 2008 Resolution also included provisions approving the forms of
5 Official Notice of Sale and Notice of Intention to Sell relating to the Certificates; and

6 WHEREAS, The Director has determined to undertake the issuance of the Certificates,
7 under the authority granted by and subject to the terms and conditions set forth in the 2008
8 Resolution; and

9 WHEREAS, In the time since the Board approved the form and authorized the
10 distribution of the 2008 Preliminary Official Statement, the City's budget and finances have
11 changed significantly; and,

12 WHEREAS, In connection with these changes, the Director and the City Attorney now
13 seek approval of the form of revised preliminary official statement relating to the Certificates
14 (the "2009 Preliminary Official Statement"); and,

15 WHEREAS, In the time since the Board approved the 2008 Resolution, the capital
16 markets have continued to experience severe turmoil, including the market for municipal
17 securities; and

18 WHEREAS, In connection with this turmoil, the Director seeks the authority to choose
19 with respect to the Certificates either a negotiated sale or a competitive sale on terms that are
20 advantageous financially to the City; and

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

23 WHEREAS, The City has paid and expects to pay certain expenditures in connection
24 with the Project prior to the issuance and sale of the Certificates, and the City intends to
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1 reimburse itself and to pay third parties for such prior expenditures from the proceeds of the
2 Certificates; and,

3 WHEREAS, Section 1.150-2 of the Treasury Regulations promulgated under the
4 Internal Revenue Code of 1986 (the "Treasury Regulations") requires the City to declare its
5 reasonable official intent to reimburse prior expenditures with the proceeds of a subsequent
6 borrowing; and,

7 WHEREAS, The Treasury Regulations require that any reimbursement allocation of
8 proceeds of the Certificates to be made with respect to expenditures incurred prior to the
9 issuance of the Certificates will occur not later than eighteen (18) months after the later of (i)
10 the date on which the expenditure is paid or (ii) the date on which the facilities are placed in
11 service, but in no event later than three (3) years after the expenditure is paid; and,

12 WHEREAS, The Director has submitted the form of the 2009 Preliminary Official
13 Statement and the form of the Purchase Agreement to the Board; such documents are on file
14 with the Clerk of the Board of Supervisors in File No. _____, which is hereby declared to
15 be a part of this Resolution as if set forth fully herein; now, therefore, be it

16 RESOLVED By the Board of Supervisors of the City and County of San Francisco, as
17 follows:

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

19 Section 2. Official Statement. The Controller of the City (the "Controller") is hereby
20 authorized and directed, in consultation with the City Attorney, to prepare a preliminary official
21 statement relating to the Certificates. The form of 2009 Preliminary Official Statement is
22 hereby approved with such changes, additions, amendments or modifications made in
23 accordance with Section 3 hereof. The Controller is hereby authorized to cause the
24 distribution of the 2009 Preliminary Official Statement in connection with the Certificates,
25 deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934, as

1 amended, and to sign a certificate to that effect. The Controller is hereby further authorized
2 and directed to prepare and sign a final Official Statement for the Certificates. The Co-
3 Financial Advisors to the City (the "Co-Financial Advisors"), under the direction of the Director,
4 are hereby authorized and directed to cause to be printed and mailed, or distributed
5 electronically, to prospective bidders or purchasers, as appropriate, for the Certificates, copies
6 of the 2009 Preliminary Official Statement and the final Official Statement relating to such
7 Certificates.

8 Section 3. Modifications to Preliminary Official Statement. The Controller is further
9 authorized, in consultation with the City Attorney, to approve and make such changes,
10 additions, amendments or modifications to the 2009 Preliminary Official Statement or the final
11 Official Statement described in Section 2 as may be necessary or advisable, including to the
12 extent necessary to provide for the issuance of BABs (as defined in Section 5 hereof). The
13 approval of any change, addition, amendment or modification to the 2009 Preliminary Official
14 Statement or the final Official Statement shall be evidenced conclusively by the delivery of the
15 2009 Preliminary Official Statement and the execution and delivery of the final Official
16 Statement.

17 Section 4. Authorization for Negotiated Sale; Authorization to Select Underwriters;
18 Approval of the Form of Purchase Contract. The Director is hereby authorized to sell the
19 Certificates by negotiated sale pursuant to a purchase contract, if the Director determines that
20 such manner of sale is in the best interest of the City, such determination to be conclusively
21 evidenced by the execution and delivery of a purchase contract for the Certificates. The
22 Director is hereby authorized and directed to appoint one or more investment banking firms to
23 act as underwriters of the Certificates in accordance with City policies and procedures as such
24 are revised from time to time, including, but not limited to, the City's policy to provide locally
25 disadvantaged minority business enterprises and women enterprises an equal opportunity to

1 participate in the performance of all City contracts. The form of the Purchase Contract
2 between the City and one or more underwriters selected by the Director, as presented to this
3 Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The
4 underwriters' discount under the Purchase Agreement shall not exceed 2.00% of the principal
5 amount of the Certificates. If the Director determines to sell the Certificates by negotiated
6 sale, the Director is hereby authorized to execute the Purchase Contract, with such changes,
7 additions, modifications or deletions as the Director may approve upon consultation with the
8 City Attorney, such approval to be conclusively evidenced by the execution and delivery of the
9 Purchase Contract.

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

17 Section 6. Reimbursement. The City hereby declares its official intent to reimburse
18 prior expenditures of the City incurred prior to the issuance and sale of the Certificates in
19 connection with the Project or portions thereof to be financed by the Certificates. The Board
20 hereby declares the City's intent to reimburse the City with the proceeds of the Certificates for
21 the expenditures with respect to the Project (the "Expenditures" and each, an "Expenditure")
22 made on and after that date that is no more than 60 days prior to adoption of this Resolution.
23 The City reasonably expects on the date hereof that it will reimburse the Expenditures with the
24 proceeds of the Certificates.

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1 Each Expenditure was and will be either (a) of a type properly chargeable to a
2 capital account under general federal income tax principles (determined in each case as of
3 the date of the Expenditure), (b) a cost of issuance with respect to the Certificates, (c) a
4 nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a
5 party that is not related to or an agent of the City so long as such grant does not impose any
6 obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the
7 City. The City shall make a reimbursement allocation, which is a written allocation by the City
8 that evidences the City's use of proceeds of the Certificates to reimburse an Expenditure, no
9 later than 18 months after the later of the date on which the Expenditure is paid or the Project
10 is placed in service or abandoned, but in no event more than three years after the date on
11 which the Expenditure is paid. The City recognizes that exceptions are available for certain
12 "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by
13 "small issuers" (based on the year of issuance and not the year of expenditure) and
14 expenditures for construction projects of at least 5 years.

15 Section 7. Ratification. The terms and conditions and approvals of the 2008
16 Resolution, except as such terms and conditions and approvals are superseded by this
17 resolution, are hereby approved, confirmed and ratified.

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19 APPROVED AS TO FORM:

20 DENNIS J. HERRERA, City Attorney

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22 By: _____
23 KENNETH DAVID ROUX
24 Deputy City Attorney

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