

1 [Settlement of Potential Litigation - Asian Art Museum Foundation Bonds - City Assurance to  
2 Seek Appropriation for Bonds - \$120,400,000]

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4 **Resolution approving the settlement of potential litigation involving the restructuring of**  
5 **the \$120,400,000 California Infrastructure and Economic Development Bank Variable**  
6 **Rate Revenue Bonds, Series 2005 (Asian Art Museum Foundation of San Francisco)**  
7 **(2005 Bonds) through the execution of a Settlement Agreement by and among the City**  
8 **and County of San Francisco, the Asian Art Museum Foundation of San Francisco,**  
9 **JPMorgan Chase Bank, National Association, MBIA Insurance Corporation, National**  
10 **Public Finance Guarantee Corporation and The Bank of New York Mellon Trust**  
11 **Company N.A., including, among other matters, the form of the Assurance Agreement**  
12 **under which the City will support repayment of the 2005 Bonds, and other additional**  
13 **material terms of such settlement.**

14  
15 WHEREAS, The Asian Art Museum of San Francisco ("Museum") houses one of the  
16 most important collections of Asian art not just in the United States but in the western world,  
17 and averages over 300,000 visitors a year and in addition to its exceptional public art  
18 exhibitions, the Museum plays an instrumental role in Asian art scholarship, conservation, and  
19 education directly and through its Research Institute for Asian Art, as well as public education  
20 programs for children, adults, and Asian art scholars; and,

21 WHEREAS, The Asian Art Museum is a charitable trust department of the City, and the  
22 City, through its Asian Art Commission (the "Commission"), serves as trustee of Museum  
23 charitable trust assets and oversees the development and administration of the Museum  
24 and controlling and managing the City's Asian art collection (S.F. Charter Sections 5.100 -  
25 5.101, 5.104); and,

1           WHEREAS, The City owns the Museum building and the Museum's collection; and,  
2           WHEREAS, The Asian Art Museum Foundation of San Francisco ("Borrower") is a  
3 private 501(c)(3) charitable organization that exists for the sole purpose of supporting the  
4 Museum; and,

5           WHEREAS, On March 20, 2003, the Museum relocated from Golden Gate Park to its  
6 present location in Civic Center, after having completed a rehabilitation and adaptive reuse of  
7 San Francisco's former main library building; and,

8           WHEREAS, The rehabilitation of the Museum building was financed through a  
9 combination of public and private financing, consisting of \$41,730,000 in City General  
10 Obligation Bonds, and \$107,445,000 of Revenue Bonds, Series 2000 (Asian Art Museum  
11 Foundation of San Francisco) (the "2000 Bonds") that the Borrower caused to be issued; and,

12           WHEREAS, In 2005, the Borrower refinanced the 2000 Bonds by issuing \$120,400,000  
13 aggregate principal amount of Variable Rate Revenue Bonds, Series 2005 (Asian Art Museum  
14 Foundation of San Francisco) (the "2005 Bonds") through the California Infrastructure and  
15 Economic Development Bank (the "Issuer"), which bond obligations were insured by MBIA  
16 Insurance Corporation ("MBIA") (as further described below); and,

17           WHEREAS, In 2009, the Borrower further caused a restructuring of the 2005 Bonds  
18 under the terms of that certain Amended and Restated Indenture dated as of December 1,  
19 2009 (the "Indenture"), between the Issuer and The Bank of New York Mellon Trust Company  
20 N.A. ("Trustee") due to, among other factors, the rating downgrade of MBIA (the "Existing  
21 Bonds"); and,

22           WHEREAS, In connection with a restructuring of the Existing Bonds, the Borrower and  
23 JP Morgan Chase Bank (the "Bank") entered into a Reimbursement Agreement dated as of  
24 December 1, 2009 (the "Reimbursement Agreement"), under which the Bank issued its  
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1 irrevocable transferrable direct pay letter of credit (the "Letter of Credit") to support the  
2 payment of the Existing Bonds; and,

3 WHEREAS, MBIA issued its Financial Guaranty Insurance Policy No. 45667(1) on  
4 February 3, 2005, to guarantee the scheduled payment of principal of and interest on the  
5 Bonds as and when due under the terms of the Indenture, as endorsed and supplemented  
6 (collectively, the "Policy"), and under the Amended and Restated Quota Share Reinsurance  
7 Agreement, effective January 1, 2009 (the "Reinsurance Agreement"), between MBIA and  
8 National Public Finance Guarantee Corporation ("National"), National agreed to reinsure the  
9 obligations of MBIA under the Policy; and,

10 WHEREAS, The Borrower executed an interest rate swap with the Bank, as Swap  
11 Counterparty, as further set forth in that certain International Swaps and Derivatives  
12 Association ("ISDA") Master Agreement dated as of January 27, 2005, together with the  
13 Schedule of ISDA Master Agreement and Credit Support Annex and Confirmation, each dated  
14 as of January 27, 2005, as amended by the Amendment Agreement dated as of December  
15 22, 2009 (collectively, the "Swap"); and,

16 WHEREAS, Events of Default have occurred and are continuing on the part of the  
17 Borrower under the Reimbursement Agreement, the Amended and Restated Loan Agreement  
18 dated as of December 1, 2009, between the Borrower and the Issuer, and the Insurance and  
19 Reimbursement Agreement dated as of February 1, 2005, as amended, between the  
20 Borrower and the Bond Insurer; and,

21 WHEREAS, The Letter of Credit expired by its terms on December 21, 2010, and as  
22 such on December 20, 2010, the Bonds were subject to mandatory tender for purchase under  
23 the Indenture, and the Bank became the owner of the Bonds due to a Trustee draw on the  
24 Letter of Credit to pay the purchase price of the Existing Bonds; and,

1           WHEREAS, The Borrower, the Bank, the Swap Counterparty, the Trustee and the  
2 Bond Insurer entered into a Forbearance Agreement and Reservation of Rights dated as of  
3 December 20, 2010 (the "Forbearance Agreement"), under which the Parties agreed to  
4 forbear from executing certain rights, including, without limitation, the Bank's agreement to  
5 forbear exercising any rights or remedies under the Reimbursement Agreement and the  
6 Indenture, during the period ending on January 21, 2011 (the "Forbearance Period), to afford  
7 the parties the opportunity to explore possible work out and restructuring of the Existing  
8 Bonds; and,

9           WHEREAS, The City has a vital interest in safeguarding for the public's benefit the  
10 continued operation of the Museum, including its public display of art and cultural artifacts;  
11 and,

12           WHEREAS, Potential litigation exists among the City, the Borrower, the Bank, MBIA,  
13 National and The Bank of New York Mellon Trust Company, N.A., as trustee, involving the  
14 Existing Bonds, the Swap, the Policy, the Letter of Credit and the rights and obligations of the  
15 parties under those agreements and instruments; and,

16           WHEREAS, The parties now wish to fully and finally resolve their current disputes and  
17 potential claims, lawsuits, rights and remedies involving the Existing Bonds (collectively, the  
18 "Disputes"), by providing for a work-out solution to address the Borrower's current financial  
19 situation that in accordance with that certain Term Sheet attached as Exhibit B to the  
20 Settlement Agreement (as described below), which requires that: (i) the Bank, the Borrower,  
21 the Trustee, MBIA and National execute and deliver a Policy Termination and Release  
22 Agreement; (ii) the Bank and the Trustee agree to terminate the Policy (the "Bond Insurer  
23 Termination"); (iii) subject to the terms of the Policy Termination and Release Agreement, the  
24 principal amount of the Reimbursement Obligations and the 2005 Bonds will be reduced to  
25 \$98,400,000; (iv) the Swap between the Swap Counterparty and the Borrower terminate at

1 the time of closing of the Loan Facility (as further described below, and herein the "Closing"),  
2 and upon Closing all Swap collateral be returned to the Borrower and the Borrower will not be  
3 liable for any costs associated with terminating the Swap; (v) the City commits to consider  
4 providing financial support to assure the payment by the Borrower of the principal of and  
5 interest under the terms of the Assurance Agreement (attached as Exhibit A to the Settlement  
6 Agreement); (vi) the Bank agrees to extend credit to or for the benefit of the Borrower in the  
7 form of the Loan Facility (the "Loan Facility") as described in and subject to the terms and  
8 conditions of the Term Sheet, including the satisfaction of the Bond Insurer's payment  
9 obligations under the Policy Termination and Release Agreement; and (vii) the parties agree  
10 to mutual releases of liability, all as more particularly described in the Settlement Agreement,  
11 a copy of which is on file with the Clerk of the Board of Supervisors in File No. , (the  
12 "Settlement Agreement"); and,

13 WHEREAS, The Settlement Agreement includes a form of Assurance Agreement  
14 under which the City agrees that, upon a failure or prospective failure by the Borrower to pay  
15 the principal of or interest on the Loan Facility as and when due, the Controller shall have the  
16 non-discretionary ministerial obligation to take all necessary and appropriate actions to  
17 prepare and, to the fullest extent possible, to request a budgetary appropriation or  
18 supplemental appropriation from the Board of Supervisors to satisfy the Borrower's obligation  
19 to make payments of the principal of and interest on the Loan Facility as and when due,  
20 provided that the Board of Supervisors and Mayor shall have the sole discretion to approve or  
21 disapprove any such appropriation or supplemental appropriation. In addition, the Bank shall  
22 have certain rights to cause or recommend increases to general admission prices to the  
23 Museum if the Board fails to appropriate sums under the Assurance Agreement, all as more  
24 particularly set forth in the form of Assurance Agreement on file with the Clerk of the Board;  
25 and,

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WHEREAS, The Mayor and the Controller have negotiated and proposed the settlement of the Disputes, and the City Attorney has recommended the proposed settlement, upon the terms and conditions set forth in the Settlement Agreement, which includes, among other matters, City support for the Borrower's payments of the Loan Facility on the terms and conditions set forth in the Assurance Agreement attached to the Settlement Agreement; now, therefore, be it

RESOLVED, That under Section 10.22 of the San Francisco Administrative Code, the Board approves the settlement and compromise of the Disputes in accordance with the terms and conditions set forth in the Settlement Agreement; and,

RESOLVED, That the Controller is authorized to execute and deliver the Settlement Agreement, including the Assurance Agreement, in substantially the form of those agreements on file with the Clerk of the Board in File No. \_\_\_\_\_; and, be it further

RESOLVED, That the Controller and the Director of Public Finance and all other appropriate officers and employees and representatives of the City are authorized and directed, upon consultation with the City Attorney, to do everything necessary or appropriate, including the execution of documents and certificates, to effectuate the purposes of this resolution, provided that such officers will not take any actions or agree to any changes in the agreements approved under this resolution that would materially increase the obligations or

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1 liabilities of the City under the terms and conditions of the Settlement Agreement on file with  
2 the Clerk of the Board in File No. \_\_\_\_\_, and changes to the agreements shall be approved  
3 by the City Attorney.

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6 RECOMMENDED:

7 OFFICE OF THE CONTROLLER

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10 \_\_\_\_\_  
11 BEN ROSENFELD  
12 Controller

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14 APPROVED:

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16 DENNIS J. HERRERA, City Attorney

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20 \_\_\_\_\_  
21 MARK D. BLAKE  
22 Deputy City Attorney

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