

File No. 100743

Committee Item No. 9

Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: June 16, 2010

Board of Supervisors Meeting

Date: 6/22/10

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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Completed by: Andrea S. Ausberry

Date Friday, June 11, 2010

Completed by: [Signature]

Date 6/17/10

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

[Refunding Certificates of Participation]

Ordinance authorizing the execution and delivery of Refunding Certificates of Participation in an aggregate principal amount not to exceed \$155,000,000 to refinance certain certificates of participation that financed various capital improvement projects; approving the form of a Trust Agreement between the City and County of San Francisco and the trustee (including certain indemnities contained therein); authorizing the selection of a trustee (the "Trustee"); approving the form of a Property Lease between the City and the Trustee named therein relating to certain property generally known as the San Bruno Complex and certain other City-owned property; approving the form of a Project Lease between the City and the Trustee (including certain indemnities contained therein); approving the form of an Escrow Agreement between the City and an Escrow Agent named therein (including certain indemnities contained therein); approving the form of an Official Notice of Sale and a Notice of Intention to Sell the Refunding Certificates of Participation, if sold by competitive sale; authorizing certain actions relating to the Refunding Certificates of Participation, if sold by negotiated sale and approving the form of a Purchase Contract between the City and an Underwriter named therein; 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, sale, execution and delivery of the Refunding Certificates of Participation; approving modifications to documents; and ratifying previous actions taken in connection therewith.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;

Board amendment deletions are ~~striketrough~~ normal.

1
2 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the
3 "Board of Supervisors" or the "Board") desires to provide for the refinancing of certain
4 certificates of participation (the "Refunded Certificates") that financed various capital
5 improvement projects (collectively, the "Project"), with proceeds from the sale of refunding
6 certificates of participation, (the "Certificates"); and,

7 WHEREAS, Chapter 43, Article VIII, Section 43.8.1 of the San Francisco
8 Administrative Code (the "Administrative Code") provides that the policy of the City and
9 County of San Francisco (the "City") is to permit the refunding of outstanding lease obligations
10 of the City whenever such refunding shall result in net debt service savings to the City
11 pursuant to the procedure set forth in such Article as well as by any other method permitted
12 by law or other ordinance of the Board; and

13 WHEREAS, The Board desires to provide an alternative to the policy of the City
14 set forth in the Administrative Code; and

15 WHEREAS, In connection with the Refunded Certificates, the policy of the City
16 (the "Refunding Policy") shall be to achieve one or more of the following purposes: debt
17 service savings in certain fiscal years, release of certain City properties securing the
18 Refunded Certificates, economic benefits and/or greater flexibility with respect to certain
19 financial covenants, all as determined and deemed necessary and/or appropriate by the
20 Director of Public Finance of the City; and

21 WHEREAS, In connection with the Certificates, the City shall enter into a property
22 lease, a project lease, a trust agreement, an escrow agreement, and certain other related
23 documents; and,

24 WHEREAS, The Certificates will be payable from rental payments paid by the City for
25 the use and occupancy of certain land and facilities subject to the project lease; and

1 WHEREAS, This Board has been presented with the form of certain documents
2 referred to herein relating to the Certificates, and the Board has examined and is approving
3 each document and desires to authorize and direct the execution of such documents and the
4 consummation of such refinancing; and,

5 WHEREAS, The adoption of this Ordinance shall constitute authorization of the
6 Certificates as obligations within the meaning of Section 864 of the California Code of Civil
7 Procedure and Section 53511 of the Government Code and any Validation Act that is effective
8 after this Ordinance is adopted; and

9 WHEREAS, The Certificates may be sold by competitive sale pursuant to an official
10 notice of sale and a notice of intention to sell or, in accordance with certain procedures, by
11 negotiated sale pursuant to a purchase contract; and,

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

13 Section 1. Recitals and Adoption of the Refunding Policy. All of the recitals herein are
14 true and correct and the Board hereby adopts the Refunding Policy in connection with the
15 execution and delivery of the Certificates.

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

21 Section 3. File Documents. The documents presented to this Board and on file with the
22 Clerk of the Board or her designee (the "Clerk") are contained in File No. 100743.

23 Section 4. Approval of the Certificates. The Board hereby approves the execution and
24 delivery of the Certificates, which shall be executed and delivered in accordance with the trust
25 agreement (the "Trust Agreement"), between the City and the trustee named therein (the

1 "Trustee"), as the same is finally executed and delivered. The proceeds of the Certificates will
2 be used to (i) refinance the Project; (ii) fund a reserve fund or the costs of a reserve surety
3 policy, if any, as the Controller of the City or his designee (collectively, the "Controller") shall
4 determine; and (iii) pay costs of execution and delivery of the Certificates. The Certificates
5 shall be designated as "City and County of San Francisco Refunding Certificates of
6 Participation, Series 2010A" or such other designation as deemed appropriate by the Director
7 of Public Finance of the City or her designee (collectively, the "Director of Public Finance").
8 The Trustee shall be authorized to cause the execution and delivery of the Certificates in an
9 aggregate principal amount not to exceed \$155,000,000, with an interest rate not to exceed
10 12 percent per annum; provided that the delivery and sale of the Certificates shall comply with
11 the Refunding Policy, as determined by the Director of Public Finance. The Certificates shall
12 be subject to prepayment as set forth in the Trust Agreement. To the extent deemed
13 necessary or desirable by the Director of Public Finance, this Board authorizes the
14 procurement of credit enhancement for the Certificates, including, but not limited to, municipal
15 bond insurance or a debt service reserve fund surety policy, if any. Notwithstanding Section
16 17 hereof, the documents authorized herein may be modified or amended to permit the
17 procurement of credit enhancement for the Certificates, to the extent deemed necessary or
18 desirable by the Director of Public Finance, upon consultation with the City Attorney.

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

1 may make or approve in accordance with Section 17 hereof. The Director of Public Finance is
2 hereby authorized to select the Trustee in accordance with City policies and procedures,
3 including but not limited to, the City's policy to provide locally disadvantaged minority business
4 enterprises and women enterprises an equal opportunity to participate in the performance of
5 all City contracts.

6 Section 6. Approval of the Property Lease. The form of a property lease (the "Property
7 Lease ") between the City and the Trustee, as presented to this Board, a copy of which is on
8 file with the Clerk of the Board, is hereby approved. The Mayor is hereby authorized to
9 execute the Property Lease, and the Clerk of the Board, is hereby authorized to attest to and
10 affix the seal of the City on the Property Lease, with such changes, additions and
11 modifications as the Mayor may make or approve in accordance with Section 17 hereof.

12 Section 7. Approval of the Project Lease; Approval of Base Rental Payments. The form
13 of a project lease between the City and the Trustee (the "Project Lease"), providing for the
14 refinancing of the Project, as presented to this Board, a copy of which is on file with the Clerk
15 of the Board, is hereby approved. The Mayor is hereby authorized to execute the Project
16 Lease, and the Clerk of the Board is hereby authorized to attest and to affix the seal of the
17 City on the Project Lease with such changes, additions and modifications as the Mayor may
18 make or approve in accordance with Section 17 hereof, provided however, that the maximum
19 Base Rental (as defined in the Project Lease) scheduled to be paid under the Project Lease
20 for the use and occupancy of certain land and facilities (the "Leased Property"), in any fiscal
21 year shall not exceed \$12,500,000 and the term of the Project Lease shall not extend beyond
22 2040.

23 Section 8. Approval of the Leased Property. The Board hereby approves of the use
24 and occupancy of all or a portion of the Leased Property by the City. The Board also hereby
25 approves of the payment by the City of the Base Rental for the use and occupancy of all or a

1 portion of the following Leased Property: (i) property commonly known as the "San Bruno
2 Complex" located in the County of San Mateo, adjacent to the City of San Bruno,
3 approximately 15 miles south of San Francisco, (ii) a City office building located at 25 Van
4 Ness Avenue in the City, (iii) a City owned building located at 2789 25th Street at the corner of
5 25th Street and Portrero Avenue in the City and (iv) a City owned building occupied by the
6 Public Defender's Office (approximately 24,332 square feet) and the Sheriff's Department
7 (approximately 7,668 square feet) located at 555 – 7th Street on the east side of 7th Street,
8 between Bryant and Brannan in the City.

9 Section 9. Approval of the Escrow Agreement. The form of an escrow agreement
10 between the City and the Escrow Agent (the "Escrow Agreement") as presented to this Board,
11 a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor is
12 hereby authorized to execute the Escrow Agreement, and the Clerk of the Board is hereby
13 authorized to attest and to affix the seal of the City on the Escrow Agreement with such
14 changes, additions and modifications as the Mayor may make or approve in accordance with
15 Section 17 hereof.

16 Section 10. Sale and Award of Certificates by Competitive Sale. In the event the
17 Director of Public Finance determines to sell the Certificates by competitive sale, the Director
18 of Public Finance, on behalf of the Controller, is hereby authorized and directed to receive
19 bids for the purchase of the Certificates, and the Controller is hereby authorized and directed
20 to award the Certificates to the bidder whose bid represents the lowest true interest cost to the
21 City, all in accordance with the procedures described in the Official Notice of Sale (as defined
22 herein).

23 Section 11. Approval of Form of Official Notice of Sale. The form of an official notice of
24 sale relating to the Certificates (the "Official Notice of Sale"), as presented to this Board, a
25 copy of which is on file with the Clerk of the Board, is hereby approved. The Director of Public

1 Finance is hereby authorized to approve the distribution of an Official Notice of Sale for the
2 Certificates, with such changes, additions modifications or deletions as the Director of Public
3 Finance may approve upon consultation with the City Attorney; such approval to be
4 conclusively evidenced by the distribution of the Official Notice of Sale to potential purchasers
5 of the Certificates.

6 Section 12. Approval of Notice of Intention to Sell Relating to the Certificates. The form
7 of a notice of intention to sell relating to the Certificates (the "Notice of intention to Sell"), as
8 presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby
9 approved. The Director of Public Finance is hereby authorized to approve the publication of
10 the Notice of Intention to Sell relating to the Certificates, with such changes, additions,
11 modifications or deletions as the Director of Public Finance may approve upon consultation
12 with the City Attorney; such approval to be conclusively evidenced by the publication of the
13 Notice of Intention to Sell relating to the Certificates.

14 Section 13. Sale of Certificates by Negotiated Sale; Approval of Purchase Contract;
15 Selection of Underwriters. In the event the Director of Public Finance determines to sell the
16 Certificates by negotiated sale, the Director of Public Finance is hereby authorized to sell the
17 Certificates by negotiated sale pursuant to one or more purchase contracts (the "Purchase
18 Contract"), by and between the City and the underwriter named therein. The form of such
19 Purchase Contract as presented to this Board, a copy of which is on file with the Clerk of the
20 Board, is hereby approved. The Controller is hereby authorized to execute the Purchase
21 Contract with such charges, additions and modifications as the Controller may make or
22 approve in accordance with Section 17 hereof; provided however, that the Underwriters'
23 discount under any such Purchase Contract shall not exceed 1.00% of the principal amount of
24 the Certificates. In order to facilitate the sale of the Certificates by negotiated sale, the
25 Director of Public Finance is hereby authorized and directed to appoint one or more financial

1 institutions to act as underwriter for the Certificates in accordance with City policies and
2 procedures, including, but not limited to, the City's policy to provide locally disadvantaged
3 minority business enterprises and women enterprises an equal opportunity to participate in
4 the performance of all City contracts.

5 Section 14. Approval of the Official Statement in Preliminary and Final Form. The form
6 of an official statement relating to the Certificates (the "Official Statement"), as presented to
7 this Board, a copy of which is on file in preliminary form with the Clerk, is hereby approved.
8 The Director of Public Finance or the Controller is hereby authorized to approve the
9 preliminary Official Statement in substantially said form, with such changes, additions,
10 modifications or deletions as either officer may approve upon consultation with the City
11 Attorney, and to deem the preliminary Official Statement final for purposes of Rule 15c2-12 of
12 the Securities and Exchange Act of 1934, as amended, to execute a certificate to that effect,
13 and to cause the preliminary Official Statement to be delivered, in printed or electronic form, to
14 potential purchasers of the Certificates, such approval to be conclusively evidenced by the
15 delivery of said deemed-final certificate. The Controller is hereby further authorized and
16 directed to sign and deliver the Official Statement in final form to purchasers of the
17 Certificates.

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

24 Section 16. General Authority. The Mayor, the City Attorney, the Controller, the City
25 Administrator, the Director of Public Finance, the Clerk of the Board and other officers of the

1 City and their duly authorized deputies and agents are hereby authorized and directed, jointly
2 and severally, to take such actions and to execute and deliver such certificates, agreements,
3 requests or other documents as they may deem necessary or desirable to accomplish the
4 proposed financing through the execution and delivery of the Certificates, to enter into the
5 Trust Agreement, Property Lease, Escrow Agreement and the Project Lease, to facilitate the
6 execution and delivery of the Certificates, to obtain bond insurance or other credit
7 enhancements with respect to the refinancing of the Project, to obtain title insurance, clear
8 any encumbrances to title, survey property and carry out other title work and otherwise to
9 carry out the provisions of this Ordinance.

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

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Section 18. Ratification of Prior Actions. All actions authorized and directed by this Ordinance and heretofore taken are hereby ratified, approved and confirmed by this Board.

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: Kenneth David Roux
KENNETH DAVID ROUX
Deputy City Attorney

TRUST AGREEMENT

by and between the
CITY AND COUNTY OF SAN FRANCISCO

and

as Trustee

Dated as of _____ 1, 2010

Relating to:

§ _____
**CITY AND COUNTY OF SAN FRANCISCO
REFUNDING CERTIFICATES OF PARTICIPATION
SERIES 2010A**

TABLE OF CONTENTS

Page

ARTICLE I

APPOINTMENT OF TRUSTEE; DEFINITIONS

Section 1.01. Appointment of Trustee4
Section 1.02. Definitions.....4
Section 1.03. Rules of Construction4
Section 1.04. Timing of Actions4
Section 1.05. Authorization4

ARTICLE II

CERTIFICATES OF PARTICIPATION

Section 2.01. Authorization and Designation4
Section 2.02. Description of the Certificates4
Section 2.03. Form.....4
Section 2.04. Execution4
Section 2.05. Transfer and Exchange4
Section 2.06. Certificates Mutilated, Lost, Destroyed or Stolen4
Section 2.07. Execution of Documents and Proof of Ownership4
Section 2.08. Certificate Register4
Section 2.09. Nonpresentment of Certificates4
Section 2.10. Unclaimed Money.....4
Section 2.11. Book-Entry System; Limited Obligation.....4
Section 2.12. Representation Letter.....4
Section 2.13. Transfers Outside Book-Entry System4
Section 2.14. Payments and Notices to the Nominee4
Section 2.15. Initial Depository and Nominee.....4

ARTICLE III

INTEREST RATE PROVISIONS

Section 3.01. Interest with Respect to the Certificates4
Section 3.02. Medium of Payment; Interest Accrual.....4

ARTICLE IV

FUNDS AND ACCOUNTS

Section 4.01. Application of Sale Proceeds of the 2010A Certificates4
Section 4.02. Establishment and Application of Costs of Issuance Fund.....4
Section 4.03. Establishment and Application of Project Fund4
Section 4.04. 4

Section 4.04.	Establishment and Application of Base Rental Fund.....	4
Section 4.04.	Establishment and Application of Reserve Fund.....	4
Section 4.06.	Surplus.....	4
Section 4.07.	Additional Rental.....	4
Section 4.08.	Repair or Replacement.....	4
Section 4.09.	Title Insurance.....	4
Section 4.10.	Application of Amounts After Default by City.....	4
Section 4.11.	Moneys Held in Trust.....	4
Section 4.12.	Investments Authorized.....	4
Section 4.13.	Reports.....	4
Section 4.14.	Valuation and Disposition of Investments.....	4
Section 4.15.	Application of Investment Earnings.....	4
Section 4.16.	Establishment and Application of Rebate Fund.....	4

ARTICLE V

PREPAYMENT

Section 5.01.	Prepayment.....	4
Section 5.02.	Selection of Certificates for Prepayment.....	4
Section 5.03.	Notice of Prepayment.....	4
Section 5.04.	Partial Prepayment of Certificates.....	4
Section 5.05.	Effect of Notice of Prepayment.....	4
Section 5.06.	Certificates No Longer Outstanding.....	4
Section 5.07.	Cancellation of Optional Prepayment.....	4
Section 5.08.	Purchase of Certificates.....	4

ARTICLE VI

THE TRUSTEE

Section 6.01.	Appointment of the Trustee.....	4
Section 6.02.	Duties and Liabilities of Trustee.....	4
Section 6.03.	Merger or Consolidation.....	4
Section 6.04.	Liability of Trustee.....	4
Section 6.05.	Preservation and Inspection of Documents.....	4
Section 6.06.	Compensation of the Trustee.....	4

ARTICLE VII

AMENDMENTS

Section 7.01.	Amendments to Trust Agreement.....	4
Section 7.02.	Amendments to Property Lease or Project Lease.....	4
Section 7.03.	Consent of Owners.....	4

ARTICLE VIII

COVENANTS

Section 8.01. City to Perform Property Lease and Project Lease.....4
Section 8.02. Compliance with Trust Agreement.....4
Section 8.03. Accounting Records and Statements4
Section 8.04. Access to Books and Records.....4
Section 8.05. General.....4
Section 8.06. Tax Matters.....4
Section 8.07. Performance4
Section 8.08. Prosecution and Defense of Suits4
Section 8.09. Further Assurances.....4
Section 8.10. Continuing Disclosure4

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01. Events of Default4
Section 9.02. Remedies on Default.....4
Section 9.03. Notice of Events of Default4
Section 9.04. No Remedy Exclusive.....4
Section 9.05. Waiver; No Additional Waiver Implied by One Waiver4
Section 9.06. Action by Owners4
Section 9.07. Application of Proceeds in Event of Default4

ARTICLE X

LIMITATION OF LIABILITY

Section 10.01. No Liability of City for Trustee Performance.....4
Section 10.02. No Liability of Trustee for Payment to Owners4
Section 10.03. No Liability of City Except as Stated4
Section 10.04. Limited Liability of Trustee.....4
Section 10.05. Limitations of Rights4

ARTICLE XI

MISCELLANEOUS

Section 11.01. Defeasance4
Section 11.02. Records4
Section 11.03. Notices4
Section 11.04. Governing Law4
Section 11.05. Partial Invalidity.....4
Section 11.06. Binding Effect; Successors4

Section 11.07. Destruction of Canceled Certificates4

Section 11.08. Excess Payments.....4

Section 11.09. Headings4

Section 11.10. Conflict of Interest.....4

Section 11.11. Proprietary or Confidential Information of City.....4

Section 11.12. Ownership of Results.....4

Section 11.13. Works for Hire4

Section 11.14. Audit and Inspection of Records.....4

Section 11.15. Subcontracting4

Section 11.16. Assignment4

Section 11.17. Earned Income Credit (EIC) Forms.....4

Section 11.18. Local Business Enterprise Utilization; Liquidated Damages.4

Section 11.19. Nondiscrimination; Penalties.....4

Section 11.20. MacBride Principles—Northern Ireland.....4

Section 11.21. Tropical Hardwood Ban.....4

Section 11.22. Drug-Free Workplace Policy4

Section 11.23. Resource Conservation4

Section 11.24. Compliance with Americans with Disabilities Act.....4

Section 11.25. Sunshine Ordinance4

Section 11.26. Public Access to Meetings and Records4

Section 11.27. Limitations on Contributions4

Section 11.28. Requiring Minimum Compensation for Covered Employees.4

Section 11.29. Requiring Health Benefits for Covered Employees.....4

Section 11.30. Prohibition on Political Activity with City Funds4

Section 11.31. Preservative-treated Wood Containing Arsenic.....4

Section 11.32. Protection of Private Information4

Section 11.33. Food Service Waste Reduction Requirements.....4

Section 11.34. Repeal of Administrative Code Provisions.....4

Section 11.35. Execution in Several Counterparts.....4

Section 3.0 Application of Sale Proceeds of the Additional Certificates4

Section 4.0 Prepayment4

Exhibit A - Form of Certificate of Participation A-1

Exhibit B - Form of Costs of Issuance Payment Request..... B-1

Exhibit C - Form of Project Fund Requisition..... C-1

Exhibit D - Form of Written Certificate of Project Completion..... D-1

Exhibit E - Schedule of Trustee’s Fees and Charges..... E-1

Exhibit F - Form of Supplement to Trust Agreement Relating to Additional Certificates..... F-1

TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of _____ 1, 2010 (this "Trust Agreement"), by and between the CITY AND COUNTY OF SAN FRANCISCO (the "City"), a charter city and county organized and existing under its Charter and the Constitution and laws of the State of California, and _____, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee");

WITNESSETH

WHEREAS, the City has heretofore caused certain certificates of participation (the "Refunded Certificates") to be executed and delivered to finance the acquisition, demolition, construction, reconstruction, installation, equipping, improvement or rehabilitation of various capital improvement projects, including _____ (as further described herein, the "Project"); and

WHEREAS, the City is causing certain property [generally known as the San Bruno Complex] and the facilities and structures related thereto (as further defined in the Project Lease, the "Facilities") and the site on which such Facilities are situated (the "Site" and, together with the Facilities, the "Leased Property") to be conveyed to the Trustee pursuant to a Property Lease, dated as of the date hereof (the "Property Lease"); and

WHEREAS, concurrently herewith, the City and the Trustee have entered into a Project Lease, dated as of the date hereof (the "Project Lease"), pursuant to which the City has leased the Leased Property from the Trustee for the City's public purposes; and

WHEREAS, pursuant to the Project Lease the City has agreed to make certain payments of Base Rental and Additional Rental (both as hereinafter defined) to the Trustee for the use and occupancy of the Leased Property; and

WHEREAS, the Trustee shall execute and deliver the hereinafter described certificates of participation (the "Certificates"), evidencing proportionate interests in all of the rights of the Trustee under the Project Lease, including the right to receive Base Rental payments payable thereunder, and shall undertake such other responsibilities as are assigned to the Trustee pursuant to this Trust Agreement; and

WHEREAS, the City has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Trust Agreement do exist, have happened and have been performed in due time, form and manner as required by law, and the parties hereto are duly authorized to execute and enter into this Trust Agreement.

NOW, THEREFORE, in consideration of the premises, of the acceptance by the Trustee of its duties hereby imposed, and of the purchase and acceptance of the Certificates by the Owners (as defined hereinafter), and to fix and declare the terms and conditions upon which the Certificates are to be executed, delivered and accepted by all Persons who shall from time to time be or become Owners thereof, and to secure the payment of the Certificates and the interest with respect thereto according to their tenor, purport and effect, and to secure the performance



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Mayor Gavin Newsom *GN*
RE: Refunding Certificates of Participation
DATE: June 1, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is the ordinance authorizing the execution and delivery of Refunding Certificates of Participation in an aggregate principal amount not to exceed \$155,000,000 to refinance certain certificates of participation that financed various capital improvement projects; approving the form of a Trust Agreement between the City and County of San Francisco and the trustee (including certain indemnities contained therein); authorizing the selection of a trustee (the "Trustee"); approving the form of a Property Lease between the City and the Trustee named therein relating to certain property generally known as the San Bruno Complex and certain other City-owned property; approving the form of a Project Lease between the City and the Trustee (including certain indemnities contained therein); approving the form of an Escrow Agreement between the City and an Escrow Agent named therein (including certain indemnities contained therein); approving the form of an Official Notice of Sale and a Notice of Intention to Sell the Refunding Certificates of Participation, if sold by competitive sale; authorizing certain actions relating to the Refunding Certificates of Participation, if sold by negotiated sale and approving the form of a Purchase Contract between the City and an Underwriter named therein; 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, sale, execution and delivery of the Refunding Certificates of Participation; approving modifications to documents; and ratifying previous actions taken in connection therewith.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

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BOARD OF SUPERVISORS
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