

[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.**

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. \_\_\_\_\_.

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.

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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: \_\_\_\_\_  
8       KENNETH DAVID ROUX  
9       Deputy City Attorney