

1 [Loan Loss Reserve Agreement and Approving Administrative Terms and Conditions -  
2 GreenFinanceSF Program]

3 **Resolution 1) approving the administrative terms and conditions for the**  
4 **GreenFinanceSF owner-arranged financing program; 2) identifying the San Francisco**  
5 **Department of the Environment, or its City agency designee, as the Program**  
6 **Administrator for the City; 3) setting reporting requirements; and 4) authorizing the**  
7 **execution of a loan loss reserve agreement and related matters.**

8  
9 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
10 "City") has conducted proceedings under and pursuant to Chapter 43, Article X of the San  
11 Francisco Administrative Code (the "Code"), which incorporates the Mello-Roos Community  
12 Facilities Act of 1982 (the "Act"), to form "City and County of San Francisco Special Tax  
13 District No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax District"), to  
14 authorize the levy of special taxes upon the land within the Special Tax District, and to issue  
15 bonds secured by said special taxes for the purpose of financing and refinancing the  
16 acquisition, installation and improvement of energy efficiency, water conservation and  
17 renewable energy improvements to or on real property and in buildings, whether such real  
18 property or buildings are privately or publicly owned (the "Facilities"), all as described in those  
19 proceedings; and

20 WHEREAS, Pursuant to 43.10.19 of the Code, the City may, without additional  
21 hearings or procedures to those required under Sections 43.10.17 and 43.10.18 of the Code,  
22 designate a parcel or parcels as an improvement area within the Special Tax District; and

23 WHEREAS, There has been presented to this Board of Supervisors a description of a  
24 program to be a part of the GreenFinanceSF program, referred to as an "owner-arranged  
25 financing program" (the "Program"), under which (i) the City will provide financing for the

1 acquisition, installation and improvement of Facilities on one or a limited number of non-  
2 residential properties or residential (including, without limitation, transitional or mixed use)  
3 properties with five units or more (collectively, "Non-Residential Properties") through the  
4 issuance of special tax bonds payable solely from special taxes levied on such properties, (ii)  
5 each such property or group of properties will be designated a unique improvement area  
6 within the Special Tax District, and (iii) the special tax bonds will be purchased by a financial  
7 institution or other sophisticated investor with experience in providing financing to Non-  
8 Residential Properties of the type participating in the Program (each, a "Qualified Investor"),  
9 on a private placement basis; and

10 WHEREAS, The United States Department of Energy ("DOE") has granted certain  
11 funds ("Grant Funds") to the City under the DOE's Energy Efficiency and Conservation Block  
12 Grant Program, as funded by the American Recovery and Reinvestment Act of 2009, in  
13 connection with the Program and the proposed issuance of Bonds; and

14 WHEREAS, The City has determined to use a portion of the Grant Funds as credit  
15 support enhancement for Bonds issued by the City as part of the Program; and

16 WHEREAS, The DOE would consider the Grant Funds to be obligated by the City in  
17 accordance with the guidelines of EECBG Program Notice 09-002C, as effective on March 14,  
18 2011, as a result of the City transferring such moneys to Wells Fargo Bank, National  
19 Association (the "Fiscal Agent"), pursuant to a Loan Loss Reserve Agreement, by and  
20 between the City and the Fiscal Agent, as fiscal agent (the "Loan Loss Reserve Agreement");  
21 and

22 WHEREAS, The City believes that its commitment of the Grant Funds as credit support  
23 enhancement for Bonds issued by the City as part of the Program pursuant to the Loan Loss  
24 Reserve Agreement is essential to attract property owners and private capital to the Program  
25 and, therefore, to the Program's ultimate success; and

1 WHEREAS, This Board of Supervisors now wishes to establish administrative terms  
2 and conditions and related processes to implement and operate the proposed Special Tax  
3 District and the proposed Program; now, therefore, be it

4 RESOLVED, That this Board of Supervisors hereby directs the establishment of the  
5 Program, and that such Program shall be implemented and operated according to the terms  
6 and conditions set forth in this Resolution; and, be it

7 FURTHER RESOLVED That the Program shall be administered on behalf of the City  
8 by the San Francisco Department of the Environment, or such other City agency as the  
9 Executive Director of the San Francisco Department of the Environment shall designate (the  
10 "Administrator"); and, be it

11 FURTHER RESOLVED That the Administrator shall establish and publish terms and  
12 conditions for City Non-Residential Property owners to apply for Program financing and, if  
13 approved, to opt into the Special Tax District as an Improvement Area, approve the levy of the  
14 special tax, and obtain such financing; at a minimum, such terms and conditions shall include  
15 the following:

16 a. Application procedures. These procedures shall include submission by a  
17 participating owner of Non-Residential Property of (i) an application, (ii) supporting  
18 documentation (including, but not limited to, existing lien holder consent form; an energy audit  
19 report; a contractor bid for the construction and installation of any improvement; and a  
20 completed cost and energy savings analysis form), and (iii) one-time administration fees and  
21 expenses.

22 b. Financial terms. These terms should include a clear statement of the related  
23 costs to be paid by participating owners of Non-Residential Property, such as application and  
24 other administrative fees, as well as a description of the process for establishing financing  
25 costs under the Program.

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2 c. Property eligibility criteria. These criteria shall be established as a means to  
3 demonstrate the ability of the subject property to pay the special taxes to be levied by the City  
4 in connection with the Program. At minimum, these criteria shall include some demonstration  
5 that the property's value exceeds the aggregate total of all private debt secured by the  
6 property plus the principal amount of the proposed special tax financing. The Board of  
7 Supervisors hereby approves the form of the property eligibility criteria in substantially the  
8 form on file with the Clerk of the Board of Supervisors. The Administrator is hereby authorized  
9 and directed to make additions or changes to the property eligibility criteria that are  
10 substantially consistent with those on file with the Clerk of the Board of Supervisors and which  
11 the Administrator concludes, following consultation with the City Attorney and the City's bond  
12 counsel, are necessary or advisable to implement the Program and achieve its public  
13 purposes.

14 d. Project eligibility criteria. These criteria shall be established to identify whether a  
15 proposed project or group of projects is of a size and character appropriate in relation to the  
16 size of and approved funding source for the Program.

17 e. List of eligible improvements. The Administrator shall develop a list of  
18 improvements that are eligible for Program financing. The initial list should build off of the  
19 projects eligible for funding from existing state and federal grant programs, with new  
20 improvements to be added upon a demonstration of numerous successful applications  
21 providing cost-effective energy or water savings. The Board of Supervisors hereby approves  
22 the form of the list of eligible improvements in substantially the form on file with the Clerk of  
23 the Board of Supervisors. The Administrator is hereby authorized and directed to make  
24 additions or changes to the list of eligible improvements that are substantially consistent with  
25 those on file with the Clerk of the Board of Supervisors and which the Administrator

1 concludes, following consultation with the City Attorney and the City's bond counsel, are  
2 necessary or advisable to implement the Program and achieve its public purposes.

3 f. Energy and water rating requirements. In accordance with the state and federal  
4 policies relative to retrofits in general and property tax lien financing programs in particular,  
5 the Program shall include a strategy to encourage energy and/or water audits, ratings or  
6 similar systematic analysis as a prerequisite to financing approval, as well as the translation of  
7 such analyses to desired outcomes in terms of the implementation of energy and water  
8 efficiency retrofits. In particular, this Board of Supervisors endorses the concept of loading  
9 order, where cost effective energy efficiency measures are pursued in advance of or in  
10 conjunction with more costly renewable energy projects.

11 g. Regulatory compliance. The Administrator should develop Program terms that  
12 assist in ensuring that all improvements are installed and constructed in accordance with  
13 applicable laws and regulations; and, be it

14 FURTHER RESOLVED, That the Administrator shall publish and file with the Clerk of  
15 the Board of Supervisors an initial status report on the progress of the Program not more than  
16 six months from the date the Program first accepts applications, with further semi-annual  
17 reports on the Program's performance to be so published and filed on or around the six-month  
18 anniversary of such date, and such reports shall include, at a minimum:

- 19 a. Total dollar amount and number of projects financed;
- 20 b. A description of the construction status of facilities financed through the  
21 Program;
- 22 c. A projection of future financing demand;
- 23 d. Program costs, including funds drawn from state or federal grant sources;
- 24 e. Program funding capacity under existing financial agreements and the bonded  
25 indebtedness limit of the Special Tax District;

1 f. Current list of eligible projects;

2 g. A description of emerging technologies or transaction types that appear to be  
3 likely to grow in the coming year based on Program experience; and recommendations for  
4 changes to the Program's legal or administrative structure, if any; and

5 h. A summary of the environmental, economic and other benefits of any Facilities  
6 financed through the Program.

7 FURTHER RESOLVED That the Loan Loss Reserve Agreement is hereby approved,  
8 together with such additions or changes as are approved.

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10 APPROVED AS TO FORM:

11 DENNIS J. HERRERA  
12 City Attorney

13  
14 By: \_\_\_\_\_  
15 MARK D. BLAKE  
16 Deputy City Attorney