

File No. 110730

Committee Item No. 2

Board Item No. 2A

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date July 18, 2011

Board of Supervisors Meeting

Date July 26, 2011

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Loan Loss Reserve Agreement</u>
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Completed by: Alisa Somera

Date July 15, 2011

Completed by: Alisa Somera

Date July 20, 2011

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

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
3 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.

1
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.

9

10 APPROVED AS TO FORM:

11 DENNIS J. HERRERA

12 City Attorney

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14 By: 

15 MARK D. BLAKE

16 Deputy City Attorney

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Mayor Lee; Supervisor Mar
BOARD OF SUPERVISORS



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

Nadia Sesay
Director
Office of Public Finance

MEMORANDUM

TO: Honorable Members, Board of Supervisors

FROM: Anthony Ababon, Bond Associate
Controller's Office of Public Finance

SUBJECT: Resolution Authorizing the Issuance and Sale of Special Tax Bonds (Federally Taxable) in an Aggregate Principal Amount Not to Exceed \$100 Million

Resolution approving administrative terms and conditions for the GreenFinanceSF program

DATE: Monday, July 11, 2011

The resolution authorizing the issuance and sale of special tax bonds (the "Bond Resolution") establishes a maximum aggregate amount of bonded indebtedness not to exceed \$100 million for financing or refinancing certain facilities; establishes certain parameters for any bonded indebtedness for financing or refinancing facilities; delegates to City staff the authority to approve the issuance of each series of special tax bonds (subject to the maximum aggregate amount previously noted) and to execute each set of related documents, as described below under the heading "GreenFinanceSF Non-Residential Program"; and approves the form of i) the Fiscal Agent Agreement by and between the City and a fiscal agent and ii) the Bond Purchase Contract by and between the City and a qualified investor, further described below. The Bond Resolution directs the Controller's Office of Public Finance to report and file with the Board of Supervisors a progress report on the program within twelve months from the date of the initial issuance of special tax bonds, with annual reports thereafter through the final maturity of the last series of special tax bonds.

The resolution approving administrative terms and conditions for the GreenFinanceSF non-residential program (the "Administrative Terms Resolution") directs the establishment of the GreenFinanceSF program for non-residential properties and residential (including, without limitation, transitional or mixed use) properties with five units or more ("Non-Residential Properties"); establishes/designates the San Francisco Department of the Environment as the program administrator; establishes and publishes program terms and conditions for non-residential property owners to apply for program financing and to opt into the special tax district; and approves the form of the Loan Loss Reserve Agreement. With respect to terms and

conditions of the GreenFinanceSF program, the Administrative Terms Resolution establishes criteria and guidelines in the following program areas:

1. Application Procedures
2. Financial Terms
3. Property Eligibility Criteria
4. Project Eligibility Criteria
5. List of Eligible Improvements
6. Energy & Water Rating Requirements
7. Regulatory Compliance

The Administrative Terms Resolution directs the program administrator to report and file with the Board of Supervisors a progress report on the program within six months from the date the program begins accepting applications, with semi-annual reports thereafter.

Together the resolutions constitute the legislative approvals necessary to authorize the issuance of special tax bonds for eligible facilities in a special tax district for the purpose of financing energy and water conservation and renewable energy improvements to privately owned non-residential parcels, also known as “GreenFinanceSF.”

Please note that Rich Chien, Private Sector Green Building Coordinator at the San Francisco Department of the Environment, has provided additional briefing materials on the overall design and implementation approach of the program (the “Program Memo”).

Background

The Board of Supervisors previously has adopted legislation and completed other necessary steps to provide for the establishment of the GreenFinanceSF program, summarized below.

Mello-Roos Community Facilities Act and the City’s Special Tax Financing Code

The Mello-Roos Community Facilities Act of 1982 (the “Act”) allows local governments in California to finance community facilities and services through the levy of special taxes. In August 2008, the City adopted a Special Tax Financing Code (the “Code”) that incorporates by reference the Act as a method for financing and refinancing the acquisition, installation and improvement of energy efficiency and renewable energy improvements on privately-owned property or buildings within the proposed Special Tax District (the “Facilities”), as described below. The Code authorizes the Board to establish a special tax district and to act as the legislative body for the special tax district.

The Code allows for an “opt in” special tax financing district to fund energy improvements to local buildings and is codified in Article 43.10 of the Administrative Code. The Code also provides the ability to recover the cost of improvements through a special tax lien on property owned by property owners electing to participate in the program. The proposed district would be formed under the alternate procedure for forming special tax districts established by Section 43.10.17 of the Code and any debt financing Facilities would be authorized under the alternate procedure established by Section 43.10.18 of the Code. On October 20, 2009, the Board adopted an Ordinance amending the Code to include water conservation among eligible projects and add

Section 43.10.19 to accommodate larger retrofits for affordable multifamily housing and larger commercial buildings. Pursuant to 43.10.19 of the Code, the City may, without additional hearings or procedures to those required under Sections 43.10.17 and 43.10.18 of the Code, designate a parcel or parcels as an improvement area within the special tax district (each an "Improvement Area").

Other Prior Legislation and Activities Relating to the Establishment of the Program

On October 6, 2009 the Board adopted Resolution No. 387-09 declaring its local goals and policies (the "Policies Resolution") for purposes of the Code and Act. The Policies Resolution adopting local goals and policies for community facilities districts and special tax districts provides guidance and conditions for the issuance of bonds secured by special taxes levied in a special tax district or a community facilities district established under the Code or the Act.

On November 24, 2009 the Board of Supervisors adopted Resolution No. 464-09 and 465-09 (the Resolutions of Intention) that initiated the process to create the proposed district and issue indebtedness financing facilities under the Code and the Act. The resolution forming the District financing eligible Facilities (the Formation Resolution) and the ordinance allowing for the levy of special taxes in the District (the Special Taxes Ordinances) were adopted by the Board of Supervisors on January 12, 2010 and February 2, 2010, respectively.

The Formation Resolution completed the proposed special tax district formation proceedings initiated with the adoption of the Resolutions of Intention and completed the legislative process to create the proposed district. The Formation Resolution named the proposed special tax district the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) (the "District"); approved the boundaries of the District as recorded in the Assessor-Recorder's Office on December 8, 2009; approved the Facilities to be financed or refinanced by the District including energy efficiency, water conservation and renewable energy improvements, bond related expenses, administrative fees, and other related costs or fees (each a "Facility" as described in Exhibit A: City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) Description of Facilities to be Financed by the Special Tax District); and authorized the City to levy a special tax to pay directly for the Facilities; to pay principal and interest, and/or to make lease payments on any lease used to finance Facilities, all as secured by the recordation of a continuing special tax lien against real property whose owners elect to annex to the District.

Special taxes applicable to parcels located in the District would be levied and collected as provided in the proposed method of apportionment (or allotment) of special taxes (Exhibit B: City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) Method of Apportionment). The Formation Resolution also approved the form of the unanimous approval (each a "Unanimous Approval", Exhibit C) that would be filed by a participating property owner authorizing the levy of the special tax upon the property and specifying the payment schedule for the special tax applicable to the parcel(s). The special tax would be levied on a parcel or parcels only with the written Unanimous Approval of the owner(s) of the parcel(s) and each Unanimous Approval of the owner(s) specifies the appropriations limit for the District, the applicable rate, the method of apportionment and manner

of collection of the special tax, and the approval and authorization to incur indebtedness financing the Facilities.

The special taxes would be levied until payment in full of any bonds financing Facilities and payment of all costs of administering the District. All of the collections of the special tax would be used as provided in the Code, in the Formation Resolution and applicable Unanimous Approval for the payment of debt service on the bonds, replenishment of a debt service reserve fund, payment of costs of the Facilities, the payment of costs of administering the District, and the costs of collecting and administering the special tax.

Residential GreenFinanceSF Program and Federal Regulatory Guidance

In spring 2010, the City established its residential GreenFinanceSF Program upon the Board of Supervisors' adoption of the above and other necessary program legislation. Prior to the City issuing any special tax bonds financing Facilities for residential property owners, however, the Federal Housing Finance Agency (FHFA) released on July 6, 2010 its "FHFA Statement on Certain Energy Retrofit Loan Programs" determining programs such as the City's residential GreenFinanceSF program "present significant safety and soundness concerns" and citing senior lien concerns regarding residential Mello Roos / Special Tax Financing programs financing the Facilities.

FHFA advised Fannie Mae, Freddie Mac, and the Federal Home Loan Banks to revise underwriting criteria and to undertake other actions that effectively directed Fannie Mae, Freddie Mac, and the Federal Home Loan Banks to reject mortgages on homes whose owners participate in residential GreenFinanceSF and similar programs in other jurisdictions. Since the release of the FHFA statement on residential programs, the City's residential GreenFinanceSF program has been suspended, pending any updates and/or revisions to the FHFA regulatory guidance and statement.

Also on July 6, 2010, the Office of the Comptroller of the Currency (OCC) released a bulletin addressed to national banks and bank examiners providing supervisory guidance on residential special tax financing programs like GreenFinanceSF. Specifically, the OCC bulletin directed national banks i) to be aware of the FHFA directives summarized above, ii) to take steps to mitigate exposures and protect collateral positions, and iii) to consider the impact of tax-assessed energy advances on asset valuations. With respect to non-residential special tax programs financing Facilities, the OCC bulletin provided the following supervisory guidance:

The OCC supports commercial and residential energy lending when such lending programs observe existing lien preference, ensure prudent underwriting, and comply with appropriate consumer protections.

The GreenFinanceSF Non-Residential Program contemplates the above and related concerns regarding the safety and soundness of the special tax bonds financing the Facilities on Non-Residential Properties, summarized below.

GreenFinanceSF Non-Residential Program

GreenFinanceSF assists owners of Non-Residential Property in the City with financing and refinancing of Facilities attached to their buildings. GreenFinanceSF utilizes an "owner-arranged financing" approach, pursuant to which an individual property owner will contract

directly with qualified installers / contractors and independently arrange for a qualified investor ("Bond Purchaser") to purchase a special tax bond financing the Facilities. GreenFinanceSF provides the Bond Purchaser with the security of a senior lien, subject to the property owner's obtaining the written consent of existing lienholders.

Each participating property (or group of properties) will be designated a unique Improvement Area within the District. Any special tax bonds issued to finance the Facilities for such property (or group of properties) will be payable solely from special taxes levied on such property. In addition, because City staff anticipates that the City will be asked to issue numerous series of special tax bonds for a similar number of Improvement Areas, the Bond Resolution provides for the delegation of authority to approve the issuance of each series of special tax bonds and the execution of each set of related documents to City staff, as noted above.

Property owners electing to participate in the program will pay the special tax only if they complete eligible and approved improvements as part of the program. Because the special tax will finance Facilities on private property and not publicly-owned improvements, interest on any issued bonds will be federally taxable.

Furthermore to address regulatory guidance summarized above, the program limits the purchase of special tax bonds to financial institutions or other sophisticated investors with experience in providing financing to Non-Residential Properties. The sale of any special tax bond will be conducted on a private placement basis, with City involvement limited to establishment of the program, provision for the senior lien and minimum underwriting, Facilities and property criteria. Prior to the issuance of special tax bonds and their purchase by qualified investors, the program will require that the Bond Purchaser make certain representations, warranties and agreements (Exhibit C: Form of Purchase Letter to the Fiscal Agent Agreement), among them that the Bond Purchaser has made an informed decision to purchase the special tax bonds; has sought accounting, legal and tax advice it considers necessary to make an informed investment decision; understands that the special tax bonds will not be subject to initial or continuing disclosure requirements customary with the City's other securities; is able to bear the economic risk of the purchase; and understands and agrees the special tax bonds are subject to transfer restrictions.

Program Documents

Under the proposed Bond Resolution, the City will issue special tax bonds financing Facilities pursuant to the fiscal agent agreement and the bond purchase contract:

Fiscal Agent Agreement: Pursuant to a Fiscal Agent Agreement between the City and a third party fiscal agent acting on behalf and for the benefit of the Bond Purchaser for the related Improvement Area, the fiscal agent administers and disburses special tax payments and enforces the covenants and remedies in the event of a default by the property owner. The Fiscal Agent Agreement provides for the terms of the special tax bond relating to an Improvement Area (e.g., the payment schedule, redemption provisions, events of default, remedies in the event of default, and other related administrative provisions). The fiscal agent holds proceeds derived from the sale of the relevant special tax bond and disburses payments for the costs incurred for the Facilities, as directed by authorized City representatives.

Bond Purchase Contract: The Bond Purchase Contract by and between the City and a Bond Purchaser, contains representations and warranties to the effect that the Bond Purchaser constitutes a qualified investor, as well as the terms of, and conditions to, each special tax bond purchase.

In addition, program documents submitted with the Bond Resolution and Administrative Terms Resolution updates documents submitted with prior legislation described above and facilitates the owner-arranged financing approach for the GreenFinanceSF Non-Residential Program:

- Form of Unanimous Approval
- Form of Lender Consent
- Rate and Method of Apportionment of Special Tax
- Program Terms
- Program Underwriting Requirements
- List of Eligible Measures

These supporting documents are described in the Program Memo.

Fiscal and Credit Impacts of a GreenFinanceSF Non-Residential Program to the City

The program is expected neither to impact the general fund nor to involve any funding support program by non-participating property owners or residents. Administrative and financing costs, if any, will be paid from fees levied on applicants to the program or through a portion of the annual special tax assessed on participating property owners' property tax bills.

Any special tax bonds to be issued under the Code will be limited obligations of the City and will be paid from the special taxes levied and collected in the related Improvement Area. The costs of establishing any Improvement Area and of financing improvements, as well as the costs associated with issuing special tax bonds and any other administrative costs are not expected to have a direct general fund impact. Any administrative expenses in connection with the proposed district or indebtedness would be borne by affected property owners and / or will be paid from proceeds of the special tax.

Neither the faith and credit of the City nor the City's general fund is pledged to the security or repayment of special tax bonds financing the Facilities. Additionally, the City's credit quality and cost of borrowing are not expected to be affected by the performance of the special tax bonds due to the limited obligation of the City with respect to the special tax bonds.

- The City is contemplating a not-to-exceed \$100 million of special tax bonds financing Facilities. While not considered a direct obligation of the City, such debt may be included in the overlapping debt of the City and may be accounted for in debt burden ratios used to evaluate the City's financial condition.
- The issuance of special tax bonds financing the Facilities will be restricted to certain considerations including, the annual levy of a special tax at least equal to the cost of administering the Program and the principal, interest and premium, if any, due.

Participating property owners may experience fluctuations in the values of their properties and/or financial and other disruptions that could impact their decision to continue paying the annual lien, leading to delinquency in payment and foreclosure on their property.

- Delinquencies in payment and foreclosures on properties participating in non-residential GreenFinanceSF will have limited, if any, impact on the City's credit rating or deemed creditworthiness.
- While there is no City obligation to make principal and interest payments on the debt, the City will covenant for the benefit of bondholders to timely levy and collect the special taxes when due; foreclose the lien of any special tax not paid subject to certain considerations.
- While the City has not issued directly special tax bonds under the Code or the Act, the City's Redevelopment Agency has issued and outstanding approximately \$236 million in special tax bonds. In addition, the Association of Bay Area Governments or ABAG has issued and outstanding approximately \$46 million in special tax bonds financing projects located in the City. These obligations are disclosed to investors and included in the City's overlapping debt.

In designing the program, the Controller's Office of Public Finance, the Office of the City Attorney, and the San Francisco Department of the Environment are considering the above factors to strike an appropriate balance among the cost of borrowing for program participants and menu of eligible facilities, administrative and procedural efficiency, and credit and rating exposure of the City within the context of the City's broader capital financing needs. As the Program evolves, the Board of Supervisors will be provided with updates as to the progress in these and other areas, as described above.

Additional Information

The Bond Resolution and the Administrative Terms Resolution will be introduced at the Board of Supervisors meeting on Tuesday, July 12, 2011. The related financing and program documents described above will have also been submitted.

Your consideration is greatly appreciated. Please contact me at 554-6902 if you have any questions. Thank you.

CC: Angela Calvillo, Clerk of the Board of Supervisors
Jason Elliott, Legislative Director
Johanna Partin, Mayor's Office
Harvey Rose, Budget Analyst
Ben Rosenfield, Controller
Nadia Sesay, Director of Public Finance
Greg Wagner, Mayor's Budget Director
Mark Blake, Deputy City Attorney

LOAN LOSS RESERVE AGREEMENT

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Fiscal Agent**

Dated as of _____, 20__

Relating to:

**City and County of San Francisco
Special Tax District No. 2009-1
(San Francisco Sustainable Financing)
Special Tax Bonds**

LOAN LOSS RESERVE AGREEMENT

THIS LOAN LOSS RESERVE AGREEMENT (the "Agreement") is made and entered into as of _____, 20__, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and chartered city organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") for and on behalf of the "City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax District"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America with a corporate trust office located in Los Angeles, California, as fiscal agent (the "Fiscal Agent").

WITNESSETH:

WHEREAS, the Board of Supervisors of the City has formed the Special Tax District under the provisions of Chapter 43, Article X of the San Francisco Administrative Code (the "Act") and implemented a program entitled "GreenFinanceSF," all for the purpose of providing financing for renewable energy, energy efficiency and water efficiency improvements on private property in the boundaries of the City; and

WHEREAS, the Board of Supervisors, as the legislative body with respect to the Special Tax District, is authorized under the Act to levy special taxes within any improvement areas formed within the Special Tax District from time to time ("Improvement Areas") to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned and to authorize the issuance of bonds ("Bonds") secured by said special taxes under the Act; and

WHEREAS, the City intends to issue a separate series of Bonds with respect to each Improvement Area pursuant to a fiscal agent agreement (each, a "Fiscal Agent Agreement") and, if required by the purchasers of the Bonds, to establish a separate debt service reserve fund (each, a "Bond Reserve Fund") for each series of Bonds; and

WHEREAS, the City will issue Bonds following approval of applications for financing by owners of property that meet the City's GreenFinanceSF program requirements; and

WHEREAS, the United States Department of Energy ("DOE") has granted certain funds ("Grant Funds") to the City under the DOE's State Energy Program (SEP), as funded by the American Recovery and Reinvestment Act of 2009, in connection with GreenFinanceSF and the proposed issuance of Bonds; and

WHEREAS, the City has determined to use a portion of the Grant Funds to fund all or a portion of the amounts required to be deposited into the Bond Reserve Funds; and

WHEREAS, to ensure that the DOE considers the Grant Funds to be obligated by the City in accordance with the guidelines of DOE Program Notice 09-002C (applicable to Energy Efficiency and Conservation Block or EECBG, and SEP grants), as effective on March 14, 2011, the City wishes to transfer to the Fiscal Agent the portion of the Grant Funds that is specified herein for the purposes set forth herein; and

WHEREAS, the City believes that its commitment of the Grant Funds as credit support enhancement for Bonds issued by the City as part of the GreenFinanceSF program pursuant to this Agreement is essential to attract property owners and private capital to the GreenFinanceSF program and, therefore, to the GreenFinanceSF program's ultimate success; and

WHEREAS, it is in the public interest and for the benefit of the City, the Improvement Areas, and the persons responsible for the payment of special taxes that the City enter into this Agreement.

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the Act.

Section 1.02. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Agreement have the meanings herein specified. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

"Act" means Chapter 43, Article X of the San Francisco Administrative Code, as amended.

"Agreement" means this Loan Loss Reserve Agreement, as it may be amended or supplemented from time to time.

"Authorized Officer" means the Finance Director, the Clerk of the Board of Supervisors, or any other officer or employee authorized by the Board of Supervisors of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Bond Reserve Fund" means a debt service reserve fund established pursuant to a Fiscal Agent Agreement.

"Bonds" has the meaning specified in the recitals hereto.

"City" means the City and County of San Francisco, and any successor thereto.

"City Attorney" means any attorney or firm of attorneys employed by the City in the capacity of city attorney.

"Finance Director" means the Controller of the City, or such official's designee.

"Fiscal Agent" means Wells Fargo Bank, National Association, the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 3.01.

"Fiscal Agent Agreement" means any fiscal agent agreement with respect to Bonds.

"Grant Funds" has the meaning specified in the recitals hereto.

"Improvement Area" has the meaning specified in the recitals hereto.

"Loan Loss Reserve Fund" has the meaning specified in Section 2.02(A) hereof.

"Officer's Certificate" means a written certificate of the City signed by an Authorized Officer of the City.

"Special Tax District" has the meaning specified in the recitals hereto.

ARTICLE II

GRANT FUNDS AND LOAN LOSS RESERVE FUND

Section 2.01. Transfer of Grant Funds to Fiscal Agent. The City hereby transfers to the Fiscal Agent, and the Fiscal Agent hereby agrees to receive and hold in trust on behalf of the City the following amount of the Grant Funds: \$_____.

Section 2.02. Loan Loss Reserve Fund.

(A) Establishment of Loan Loss Reserve Fund. Upon receipt of the amount set forth in Section 2.01, the Fiscal Agent shall deposit such amount into a fund to be named the "**Loan Loss Reserve Fund**," which is hereby established as a separate fund to be held by the Fiscal Agent solely for such deposit.

(B) Withdrawals from Loan Loss Reserve Fund. The Fiscal Agent shall make withdrawals from the Loan Loss Reserve Fund solely upon the written instructions of the City. The City intends to transfer moneys from the Loan Loss Reserve Fund to one or more Bond Reserve Funds in connection with issuance of one or more series of Bonds.

(C) Investment. Moneys in the Loan Loss Reserve Fund shall be invested as directed by the City in an Officer's Certificate. In the absence of direction, moneys in the Loan Loss Reserve Fund shall be invested in money market funds registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, and having a rating by S&P of AAAM-G or AAAM and by Moody's of Aaa. Earnings and profits resulting from such investment shall be retained by the Fiscal Agent in the Loan Loss Reserve Fund to be used for the purposes of such fund.

The Fiscal Agent and its affiliates may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. The Fiscal Agent shall not be required to determine the legality of any investments.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements that include detail for all investment transactions made by the Fiscal Agent hereunder.

The Fiscal Agent shall sell at fair market value, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the Loan Loss Reserve Fund and the Fiscal Agent shall not be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

ARTICLE III

FISCAL AGENT

Section 3.01. The Fiscal Agent.

(A) **Appointment.** The Fiscal Agent is hereby appointed to hold the Loan Loss Reserve Fund in trust on behalf of the City in accordance with the other provisions of this Agreement. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied duties, covenants or obligations shall be read into this Agreement against the Fiscal Agent. The Fiscal Agent acknowledges the receipt of sufficient and valuable consideration for its obligations hereunder.

(B) **Merger.** Any company into which the Fiscal Agent may be merged or converted or with which it may be consolidated, or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under paragraph (C) of this Section shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. The Fiscal Agent shall give the Finance Director written notice of any such succession hereunder.

(C) **Removal.** Upon 30 days written notice, the City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, national banking association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 3.01, combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(D) **Resignation.** The Fiscal Agent may at any time resign by giving written notice to the City by certified mail return receipt requested. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

(E) **No Successor.** If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section 3.01 within 45 days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent, at the expense of the City, may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

(F) **Court Order.** If, by reason of the judgment of any court, the Fiscal Agent is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Fiscal Agent hereunder shall be assumed by and vest in the Finance Director.

Section 3.02. Liability of Fiscal Agent.

(A) **General.** The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. All indemnifications and releases from liability granted to the Fiscal Agent hereunder shall extend to the directors, officers and employees of the Fiscal Agent.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

(B) **Errors in Judgment.** The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer of the Fiscal Agent unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

(C) **No Expenditures.** No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

Section 3.03. Information; Books and Accounts. The Fiscal Agent shall provide to the City such information relating to the Loan Loss Reserve Fund and as the City shall reasonably request, including but not limited to monthly statements reporting funds held and transactions by the Fiscal Agent, including the value of any investments held by the Fiscal Agent.

Section 3.04. Notice to Fiscal Agent. The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, facsimile transmission, electronic mail, written instructions, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be

counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in accordance therewith.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by an Officer's Certificate of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 3.05. Compensation. The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys (including the allocated costs of in-house attorneys), agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement.

Section 3.06. Conflict of Interest. Through its execution of this Agreement, the Fiscal Agent acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

Section 3.07. Proprietary or Confidential Information of City. The Fiscal Agent understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, the Fiscal Agent may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. The Fiscal Agent agrees that all information disclosed by the City to the Fiscal Agent shall be held in confidence and used only in performance of the Agreement, provided that, notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Fiscal Agent from sources other than the other parties hereto, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Fiscal Agent's business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Fiscal Agent or any affiliate or an officer, director, employer or shareholder thereof is a party or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Fiscal Agent having a need to know the same, provided that Fiscal Agent advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City and this Agreement. The Fiscal Agent shall exercise the same standard of care to protect such information as a reasonably prudent Fiscal Agent would use to protect its own proprietary data.

Section 3.08. Ownership of Results. Any interest of the Fiscal Agent or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by the Fiscal Agent or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the City. However, the Fiscal Agent may retain and use copies for reference and as documentation of its experience and capabilities.

Section 3.09. Works for Hire. If, in connection with services performed under this Agreement, the Fiscal Agent or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by the Fiscal Agent or its subcontractors under this Agreement are not works for hire under U.S. law, the Fiscal Agent hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, the Fiscal Agent may retain and use copies of such works for reference and as documentation of its experience and capabilities.

Section 3.10. Audit and Inspection of Records. The Fiscal Agent agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Fiscal Agent will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement provided, however, that the Fiscal Agent shall not be required to disclose confidential or proprietary information. The Fiscal Agent shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement, until after final audit has been resolved, or for such longer period as required by its document retention policies and procedures, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the City by this Section.

Section 3.11. Subcontracting. The Fiscal Agent is prohibited from subcontracting this Agreement or any part of it, unless such subcontracting is first approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

Section 3.12. Assignment. The services to be performed by the Fiscal Agent are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Fiscal Agent unless first approved by the City (except pursuant to Section 3.01(E)) by written instrument executed and approved in the same manner as this Agreement provided, however, that no such approval is required for assignments pursuant to Section 3.01(E) hereof.

Section 3.13. Earned Income Credit (EIC) Forms. Administrative Code Section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(A) The Fiscal Agent shall provide EIC Forms to each Eligible Employee (i.e., any employee of the Fiscal Agent who is paid at a rate that, on an annualized basis, is not greater than the EIC Limit) at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless the Fiscal Agent has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Fiscal Agent; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(B) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Fiscal Agent of the terms of this Agreement. If, within thirty days after the Fiscal Agent receives written notice of such a breach, the Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Fiscal Agent fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(C) Any subcontract entered into by the Fiscal Agent shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(D) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the Administrative Code.

Section 3.14. Local Business Enterprise Utilization; Liquidated Damages.

(A) The LBE Ordinance. The Fiscal Agent, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the Administrative Code as it now exists or as it may be amended in the future (collectively the "**LBE Ordinance**"), provided such amendments do not materially increase the Fiscal Agent's obligations or liabilities, or materially diminish the Fiscal Agent's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Fiscal Agent's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Fiscal Agent's obligations under this Agreement and shall entitle the City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for, under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, the Fiscal Agent shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(B) Compliance and Enforcement. If the Fiscal Agent willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, the Fiscal Agent shall be liable for liquidated damages in an amount equal to the Fiscal Agent's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "**Director of HRC**") may also impose other sanctions against the Fiscal Agent authorized in the LBE Ordinance, including declaring the Fiscal Agent to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Fiscal Agent's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code Section 14B.17.

By entering into this Agreement, the Fiscal Agent acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to the City upon demand. The Fiscal Agent further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to the Fiscal Agent on any contract with the City.

The Fiscal Agent agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Section 3.15. Nondiscrimination; Penalties.

(A) Fiscal Agent Shall Not Discriminate. In the performance of this Agreement, the Fiscal Agent agrees not to discriminate against any employee, City employee working with such Fiscal Agent or subcontractor, applicant for employment with such Fiscal Agent or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(B) Subcontracts. The Fiscal Agent shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. The Fiscal Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(C) Nondiscrimination in Benefits. The Fiscal Agent does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the Administrative Code.

(D) Condition to Contract. As a condition to this Agreement, the Fiscal Agent shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(E) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Fiscal Agent shall comply fully with and be bound by all of the provisions that apply to this Agreement under such

Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Fiscal Agent understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Fiscal Agent and/or deducted from any payments due Fiscal Agent.

Section 3.16. MacBride Principles—Northern Ireland. Pursuant to Administrative Code Section 12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Fiscal Agent acknowledges and agrees that he or she has read and understood this Section.

Section 3.17. Tropical Hardwood Ban. Pursuant to Section 804(b) of the San Francisco Environment Code, the City urges Fiscal Agent not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 3.18. Drug-Free Workplace Policy. The Fiscal Agent acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on the City premises. The Fiscal Agent agrees that any violation of this prohibition by the Fiscal Agent, its employees, agents or assigns will be deemed a material breach of this Agreement.

Section 3.19. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Fiscal Agent to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

Section 3.20. Compliance with Americans with Disabilities Act. The Fiscal Agent acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Fiscal Agent, must be accessible to the disabled public. The Fiscal Agent shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Fiscal Agent agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Fiscal Agent, its employees, agents or assigns will constitute a material breach of this Agreement.

Section 3.21. Sunshine Ordinance. In accordance with Administrative Code Section 67.24(e), contracts, the Fiscal Agent's bids, responses to solicitations and all other records of communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Section 3.22. Public Access to Meetings and Records. Only if the Fiscal Agent receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds

and is a non-profit organization as defined in Chapter 12L of the Administrative Code, the Fiscal Agent shall comply with and be bound by all the applicable provisions of that Chapter and this Section 3.22; otherwise it will not be required to comply with or be bound by Chapter 12L of the Administrative Code and this Section 3.22. By executing this Agreement, the Fiscal Agent agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Fiscal Agent further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Fiscal Agent acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Fiscal Agent further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

Section 3.23. Limitations on Contributions. Through execution of this Agreement, the Fiscal Agent acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code ("**Section 1.126**"), which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment; for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (a) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Fiscal Agent acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Fiscal Agent further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Fiscal Agent's board of directors; the Fiscal Agent's chairperson, the chief executive officer, the chief financial officer and the chief operating officer; any person with an ownership interest of more than 20% in Fiscal Agent; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Fiscal Agent. Additionally, the Fiscal Agent acknowledges that the Fiscal Agent must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Section 3.24. Requiring Minimum Compensation for Covered Employees.

(A) Unless the Fiscal Agent is exempt, the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Fiscal Agent's obligations under the MCO is set forth in this Section. Unless the Fiscal Agent is exempt from such provisions under Section 11.28(i) hereof, the Fiscal Agent is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(B) The MCO requires Fiscal Agent to pay Fiscal Agent's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Fiscal Agent is obligated to keep informed of the then-current requirements. Any subcontract entered into by Fiscal Agent shall require the subcontractor to comply with the requirements of the MCO

and shall contain contractual obligations substantially the same as those set forth in this Section. It is Fiscal Agent's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Fiscal Agent.

(C) Fiscal Agent shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(D) Fiscal Agent shall maintain employee and payroll records as required by the MCO. If Fiscal Agent fails to do so, it shall be presumed that the Fiscal Agent paid no more than the minimum wage required under State law.

(E) The City is authorized to inspect Fiscal Agent's job sites and conduct interviews with employees and conduct audits of Fiscal Agent.

(F) Fiscal Agent's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Fiscal Agent fails to comply with these requirements. Fiscal Agent agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Fiscal Agent's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(G) Fiscal Agent understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Fiscal Agent fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(H) Fiscal Agent represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(I) If Fiscal Agent is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Fiscal Agent later enters into an agreement or agreements that cause Fiscal Agent to exceed that amount in a fiscal year, Fiscal Agent shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Fiscal Agent and this department to exceed \$25,000 in the fiscal year.

Section 3.25. Requiring Health Benefits for Covered Employees. Unless the Fiscal Agent is exempt (in which event it shall not be required to comply with Chapter 12Q or this

Section 3.25), the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in Administrative Code Chapter 12Q ("Chapter 12Q"), including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(A) For each Covered Employee, the Fiscal Agent shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Fiscal Agent chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(B) Notwithstanding the above, if the Fiscal Agent is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(C) The Fiscal Agent's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Fiscal Agent if such a breach has occurred. If, within thirty days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Fiscal Agent fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Fiscal Agent fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(D) Any Subcontract entered into by the Fiscal Agent shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Fiscal Agent shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Fiscal Agent shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Fiscal Agent based on the Subcontractor's failure to comply, provided that the City has first provided the Fiscal Agent with notice and an opportunity to obtain a cure of the violation.

(E) The Fiscal Agent shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to the Fiscal Agent's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(F) The Fiscal Agent represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(G) The Fiscal Agent shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(H) The Fiscal Agent shall keep itself informed of the current requirements of the HCAO.

(I) The Fiscal Agent shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(J) The Fiscal Agent shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

(K) The Fiscal Agent shall allow the City to inspect Fiscal Agent's job sites and have access to the Fiscal Agent's employees in order to monitor and determine compliance with HCAO.

(L) The City may conduct random audits of the Fiscal Agent to ascertain its compliance with HCAO. Fiscal Agent agrees to cooperate with City when it conducts such audits.

(M) If the Fiscal Agent is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Fiscal Agent later enters into an agreement or agreements that cause the Fiscal Agent's aggregate amount of all agreements with the City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Fiscal Agent and the City to be equal to or greater than \$75,000 in the fiscal year.

Section 3.26. Prohibition on Political Activity with City Funds. In accordance with Administrative Code Chapter 12.G, the Fiscal Agent may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Fiscal Agent Agreement. The Fiscal Agent agrees to comply with Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event The Fiscal Agent violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Fiscal Agent from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Fiscal Agent's use of profit as a violation of this Section.

Section 3.27. Preservative-treated Wood Containing Arsenic. The Fiscal Agent may not purchase preservative-treated wood products containing arsenic in the performance of this Fiscal Agent Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Fiscal Agent may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Fiscal Agent from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a

pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Section 3.28. Protection of Private Information. The Fiscal Agent has read and agrees, subject to the following sentence, to the terms set forth in Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. The Fiscal Agent agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract provided that, notwithstanding anything herein or in the Administrative Code to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Fiscal Agent from sources other than the other parties hereto, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Fiscal Agent's business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Fiscal Agent or any affiliate or an officer, director, employer or shareholder thereof is a party or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Fiscal Agent having a need to know the same, provided that Fiscal Agent advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City and this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Fiscal Agent pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Fiscal Agent.

Section 3.29. Food Service Waste Reduction Requirements. Effective June 1, 2007, the Fiscal Agent agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance applicable to contractors with the City, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Fiscal Agent Agreement as though fully set forth. This provision is a material term of this Fiscal Agent Agreement. By entering into this Agreement, the Fiscal Agent agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Fiscal Agent agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this Fiscal Agent Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Fiscal Agent's failure to comply with this provision.

Section 3.30. Repeal of Administrative Code Provisions. To the extent that the City repeals any provision of the Administrative Code incorporated, set forth or referenced in Sections 3.06 through 3.29 hereof, other than pursuant to a restatement or amendment of any such provision, such provision, as incorporated, set forth or referenced herein, shall no longer apply to this Agreement or the Fiscal Agent.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Amendments. This Agreement may be amended in a writing signed by the City and the Fiscal Agent at any time.

Section 4.02. Benefits of Agreement Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City and the Fiscal Agent any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Fiscal Agent.

Section 4.03. Successor and Predecessor. Whenever in this Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 4.04. Notices to and Demands on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 336
San Francisco, CA 94102
Attn: Controller

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by facsimile transmission receipt of which has been confirmed or by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) as follows:

Wells Fargo Bank, National Association
Corporate Trust Department
MAC: A0119-181
333 Market Street
18th Floor
San Francisco, CA 94105-2102
Fax: 415.371.3400

Section 4.05. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held by a court of competent jurisdiction to be illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 4.06. No Merger. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

Section 4.07. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 4.08. Conflict with Act. In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the date hereof, the provision of the Act shall prevail over the conflicting provision of this Agreement.

Section 4.09. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Fiscal Agent have caused this Loan Loss Reserve Agreement to be executed as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO,
for and on behalf of
Special Tax District No. 2009-1
(SAN FRANCISCO SUSTAINABLE FINANCING)

By: _____
Finance Director

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
as Fiscal Agent

By: _____
Authorized Officer

