74-09

[Certificates of Participation for Street Improvements]

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Ordinance authorizing the execution and delivery of Certificates of Participation in an aggregate principal amount not to exceed \$42,000,000 to finance the acquisition, construction, improvement and installation of certain street improvements; approving the form of a First Supplement to Trust Agreement between the City and County of San Francisco and the Trustee named therein (including certain indemnities contained therein); approving the form of a First Supplement to Project Lease between the City and the Trustee relating to the real property and improvements located at 375 Laguna Honda Boulevard; approving the form of an Official Notice of Sale and Notice of Intention to Sell for the Certificates of Participation, if sold by competitive sale: authorizing certain actions relating to the Certificates of Participation, if sold by negotiated sale; approving the form of an official statement in preliminary and final form; approving the form of a Continuing Disclosure Certificate; granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of the Certificates of Participation; approving modifications to documents; and ratifying previous actions taken in connection therewith.

WHEREAS, The Board of Supervisors of the City and County of San Francisco (the "Board of Supervisors" or the "Board") desires to finance the acquisition, construction, improvement and installation of certain street improvements (the "Project"); and,

WHEREAS, The Board has previously authorized the execution and delivery of certificates of participation to finance the demolition, improvement, installation, equipping, rehabilitation, construction and/on reconstruction of a health care, assisted living and/or other

Mayor Newsom BOARD OF SUPERVISORS

type of continuing care facility or facilities and related improvements (the "Leased Property") located at 375 Laguna Honda Boulevard (the "Site") with proceeds from the sale of City and County of San Francisco Certificates of Participation, Series 2009A (Multiple Capital Improvement Projects) (the "Series 2009A Certificates") pursuant to a trust agreement (the "Trust Agreement"), between the City and the trustee named therein (the "Trustee"); and,

WHEREAS, In connection with the execution and delivery of the Series 2009A Certificates, the City executed a Property Lease (the "Property Lease"), pursuant to which the City leased the Site and the Leased Property to the Trustee and a Project Lease (the "Project Lease"), pursuant to which the Trustee leased the Site and the Leased Property back to the City; and,

WHEREAS, The Trust Agreement provides for the issuance of Additional Certificates to provide funds for additional capital projects of the City; and,

WHEREAS, The City desires to cause the execution and delivery of a series of Additional Certificates (as further defined herein, the "Certificates") to provide funds for the Project; and,

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

WHEREAS, The adoption of this Ordinance shall constitute authorization of the Certificates within the meaning of Section 864 of the California Code of Civil Procedure and any Validation Act that is effective after this Ordinance takes effect; and,

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

Be it ordained by the People of the City and County of San Francisco, as follows: Section 1. Recitals. All of the recitals herein are true and correct.

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

Section 3. <u>File Documents</u>. The documents presented to this Board and on file with the Clerk of the Board or her designee (the "Clerk") are contained in File

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Section 4. Approval of the Certificates. The Board hereby approves the execution and delivery of the Certificates, which shall be executed and delivered in accordance with the first supplement to trust agreement referred to in Section 5 below (the "First Supplement to Trust Agreement"), as the same is finally executed and delivered. The proceeds of the Certificates will be used to (i) fund the Project; (ii) fund a reserve fund or the costs of a reserve surety policy, as the Controller or his designee shall determine; (iii) fund capitalized interest; and (iv) pay costs of issuance of the Certificates. The Certificates shall be designated as "City and County of San Francisco Certificates of Participation, Series 2009B (Multiple Capital Improvement Projects)," with such other designation as deemed appropriate by the Director of Public Finance of the City or her designee (collectively, the "Director of Public Finance"). The Trustee shall not be authorized to cause the execution and delivery of Certificates in an aggregate principal amount greater than \$42,000,000, with an interest rate not to exceed 12 percent per annum. The Certificates shall be subject to prepayment as set forth in the First Supplement to Trust Agreement. To the extent deemed necessary by the Director of Public Finance, this Board authorizes the procurement of credit enhancement for the Certificates,

including, but not limited to, municipal bond insurance or a debt service reserve fund surety policy. Notwithstanding Section 14 hereof, the documents authorized herein may be modified or amended to permit the procurement of credit enhancement for the Certificates, to the extent deemed necessary by the Director of Public Finance, upon consultation with the City Attorney.

Section 5. Approval of the First Supplement to Trust Agreement. The form of a first supplement to trust agreement (the "First Supplement to Trust Agreement") between the City and the Trustee, as presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor of the City or his designee (collectively, the "Mayor") is hereby authorized to execute the First Supplement to Trust Agreement, and the Clerk of the Board or her designee (collectively, the "Clerk of the Board"), is hereby authorized to attest to and affix the seal of the City on the First Supplement to Trust Agreement, with such changes, additions and modifications as the Mayor may make or approve in accordance with Section 14 hereof.

Section 6. Approval of the First Supplement to Project Lease. The form of a first supplement to project lease between the City and the Trustee (the "First Supplement to Project Lease"), providing for the financing of the Project, as presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor is hereby authorized to execute the First Supplement to Project Lease, and the Clerk of the Board is hereby authorized to attest and to affix the seal of the City on the First Supplement to Project Lease with such changes, additions and modifications as the Mayor may make or approve in accordance with Section 14 hereof, provided however, that the maximum Base Rental (as defined in the Project Lease) relating to the Project scheduled to be paid under the Project Lease, as supplemented by the First Supplement to Project Lease in any fiscal year shall not

exceed \$3,700,000 and the term of the First Supplement to Project Lease shall not extend beyond 2053.

Section 7. <u>Sale and Award of Certificates by Competitive Sale</u>. In the event the Director of Public Finance determines to sell the Certificates by competitive sale, the Director of Public Finance, on behalf of the Controller, is hereby authorized and directed to receive bids for the purchase of the Certificates, and the Controller is hereby authorized and directed to award the Certificates to the bidder whose bid represents the lowest true interest cost to the City, all in accordance with the procedures described in the Notice of Sale (as defined herein).

Section 8. Approval of Form of Official Notice of Sale. The form of an official notice of sale relating to the Certificates (the "Official Notice of Sale"), as presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The Director of Public Finance is hereby authorized to approve the distribution of an Official Notice of Sale for the Certificates, with such changes, additions modifications or deletions as the Director of Public Finance may approve upon consultation with the City Attorney; such approval to be conclusively evidenced by the distribution of the Official Notice of Sale to potential purchasers of the Certificates.

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

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Section 10. Sale of Certificates by Negotiated Sale. In the event the Director of Public Finance determines to sell the Certificates by negotiated sale, such sale shall occur (i) in accordance with a resolution adopted by this Board approving the form of one or more bond purchase contracts submitted to this Board, (ii) by, one or more investment banking firms named in such resolution to act as underwriters for the Certificates in accordance with City policies and procedures, including, but not limited to, the City's policy to provide locally disadvantaged minority business enterprises and women enterprises an equal opportunity to participate in the performance of all City contracts and (iii) otherwise in accordance with the terms of such resolution.

Section 11. Approval of the Official Statement in Preliminary and Final Form. The form of an official statement relating to the Certificates (the "Official Statement"), as presented to this Board, a copy of which is on file in preliminary form with the Clerk, is hereby approved. The Director of Public Finance is hereby authorized to approve the distribution of the preliminary Official Statement in substantially said form, with such changes, additions. modifications or deletions as the Director of Public Finance may approve upon consultation with the City Attorney; such approval to be conclusively evidenced by the distribution of the preliminary Official Statement to potential purchasers of the Certificates. The Controller of the City or his designee (collectively, the "Controller") is hereby authorized to cause the distribution of the Preliminary Official Statement, deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934, as amended, and to execute a certificate to that effect. The Controller is hereby further authorized and directed to sign the Official Statement in final form. The Controller or the Director of Public Finance are hereby authorized to direct the Co-Financial Advisors to cause to be printed and mailed, or distributed electronically, to prospective bidders, copies of the Preliminary Official Statement and the final Official Statement.

Section 12. Approval of the Continuing Disclosure Certificate. The form of a Continuing Disclosure Certificate of the City, as presented to this Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The Controller is hereby authorized to execute the Continuing Disclosure Certificate, with such changes, additions, modifications or deletions as the Controller may approve upon consultation with the City Attorney; such approval to be conclusively evidenced by the execution and delivery of the Continuing Disclosure Certificate.

Section 13. General Authority. The Mayor, the City Attorney, the Controller, the City Administrator, the Director of Public Finance, the Clerk of the Board and other officers of the City and their duly authorized deputies and agents are hereby authorized and directed, jointly and severally, to take such actions and to execute and deliver such certificates, agreements, requests or other documents as they may deem necessary or desirable to accomplish the proposed financing through the execution and delivery of the Certificates, to enter into the First Supplement to Trust Agreement and the First Supplement to Project Lease, to facilitate the execution and delivery of the Certificates, to obtain bond insurance or other credit enhancements with respect to the financing of the Project, to obtain title insurance, clear any encumbrances to title, survey property and carry out other title work and otherwise to carry out the provisions of this Ordinance.

Section 14. Modifications, Changes and Additions. The Mayor is hereby authorized to approve and make such modifications, changes or additions to the First Supplement to Trust Agreement or the First Supplement to Project Lease, upon consultation with the City Attorney, as may be necessary or desirable in the interests of the City, and which changes do not materially increase the obligations of the City under the First Supplement to Trust Agreement or the First Supplement to Project Lease. The Mayor's approval of such modifications, changes or additions shall be conclusively evidenced by the execution and delivery by the

Mayor and the Clerk of the Board of the First Supplement to Trust Agreement and the First Supplement to Project Lease.

Section 15. Ratification of Prior Actions. All actions authorized and directed by this Ordinance and heretofore taken are hereby ratified, approved and confirmed by this Board.

APPROVED AS TO FORM.
DENNIS J/HERRERA, City Attorney

By:

Deputy City Attorney



City and County of San Francisco Tails

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Ordinance

File Number:

090404

Date Passed:

Ordinance authorizing the execution and delivery of Certificates of Participation in an aggregate principal amount not to exceed \$42,000,000 to finance the acquisition, construction, improvement and installation of certain street improvements; approving the form of a First Supplement to Trust Agreement between the City and County of San Francisco and the Trustee named therein (including certain indemnities contained therein); approving the form of a First Supplement to Project Lease between the City and the Trustee relating to the real property and improvements located at 375 Laguna Honda Boulevard; approving the form of an Official Notice of Sale and Notice of Intention to Sell for the Certificates of Participation, if sold by competitive sale; authorizing certain actions relating to the Certificates of Participation, if sold by negotiated sale; approving the form of an official statement in preliminary and final form; approving the form of a Continuing Disclosure Certificate; granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of the Certificates of Participation; approving modifications to documents; and ratifying previous actions taken in connection therewith.

April 28, 2009 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

May 5, 2009 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090404

I hereby certify that the foregoing Ordinance was FINALLY PASSED on May 5, 2009 by the Board of Supervisors of the City and County of San Francisco.

ngela Calvillo

Clerk of the Board

Date Approved