

FILE NO.

RESOLUTION NO.

[Resolution approving administrative terms and conditions for the GreenFinanceSF program.]

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

WHEREAS, The Board of Supervisors of the City and County of San Francisco (the "City") has conducted proceedings under and pursuant to Chapter 43, Article X of the San Francisco Administrative Code (the "Code"), which incorporates the Mello-Roos Community Facilities Act of 1982 (the "Act"), to form "City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax District"), to authorize the levy of special taxes upon the land within the Special Tax District, and to issue bonds secured by said special taxes for the purpose of financing and refinancing 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 (the "Facilities"), all as described in those proceedings; and,

WHEREAS, 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; and,

WHEREAS, There has been presented to this Board of Supervisors a description of a program to be a part of the GreenFinanceSF program, referred to as an "owner-arranged financing program" (the "Program"), under which (i) the City will provide financing for the acquisition, installation and improvement of Facilities on one or a limited number of non-residential properties or residential (including, without limitation, transitional or mixed use) properties with five units or more (collectively, "Non-Residential Properties") through the issuance of special tax bonds payable solely from special taxes levied on such properties, (ii) each such property or group of properties will be designated a unique improvement area within the Special Tax District, and (iii) the special tax bonds will be purchased by a financial institution or other sophisticated investor with experience in providing financing to Non-Residential Properties of the type participating in the Program (each, a "Qualified Investor"), on a private placement basis; and,

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

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

WHEREAS, The DOE would consider the Grant Funds to be obligated by the City in accordance with the guidelines of EECBG Program Notice 09-002C, as effective on March 14, 2011, as a result of the City transferring such moneys to Wells Fargo Bank, National

Association (the "Fiscal Agent"), pursuant to a Loan Loss Reserve Agreement, by and between the City and the Fiscal Agent, as fiscal agent (the "Loan Loss Reserve Agreement"); 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 Program pursuant to the Loan Loss Reserve Agreement is essential to attract property owners and private capital to the Program and, therefore, to the Program's ultimate success; and,

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

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

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

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

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

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

c. *Property eligibility criteria.* These criteria shall be established as a means to demonstrate the ability of the subject property to pay the special taxes to be levied by the City in connection with the Program. At minimum, these criteria shall include some demonstration that the property's value exceeds the aggregate total of all private debt secured by the property plus the principal amount of the proposed special tax financing. The Board of Supervisors hereby approves the form of the property eligibility criteria in substantially the form on file with the Clerk of the Board of Supervisors. The Administrator is hereby authorized and directed to make additions or changes to the property eligibility criteria that are substantially consistent with those on file with the Clerk of the Board of Supervisors and which the Administrator concludes, following

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

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

e. *List of eligible improvements.* The Administrator shall develop a list of improvements that are eligible for Program financing. The initial list should build off of the projects eligible for funding from existing state and federal grant programs, with new improvements to be added upon a demonstration of numerous successful applications providing cost-effective energy or water savings. The Board of Supervisors hereby approves the form of the list of eligible improvements in substantially the form on file with the Clerk of the Board of Supervisors. The Administrator is hereby authorized and directed to make additions or changes to the list of eligible improvements that are substantially consistent with those on file with the Clerk of the Board of Supervisors and which the Administrator concludes, following consultation with the City Attorney and the City's bond counsel, are necessary or advisable to implement the Program and achieve its public purposes.

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

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

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

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

- g. A description of emerging technologies or transaction types that appear to be likely to grow in the coming year based on Program experience; and recommendations for changes to the Program's legal or administrative structure, if any; and
- h. A summary of the environmental, economic and other benefits of any Facilities financed through the Program.

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
MARK D. BLAKE  
Deputy City Attorney