

File No. 091248

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 11/18/09

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input 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"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input 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"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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Completed by: Gail Johnson

Date 11/13/09

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

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



1 [Resolution of Intention to Establish Special Tax District.]

2  
3 **Resolution of intention to establish special tax district.**

4  
5 WHEREAS, Under Chapter 43, Article X of the San Francisco Administrative Code (the  
6 "Code"), which Code incorporates by reference the Mello-Roos Community Facilities Act of  
7 1982, as amended (the "Act"), this Board of Supervisors is authorized to establish a special  
8 tax district and to act as the legislative body for such special tax district; and,

9 WHEREAS, In connection with adoption of the Code, this Board of Supervisors made,  
10 based on the record before it, certain findings, determinations and declarations which are  
11 hereby incorporated herein by this reference, including that:

12 A. Global warming and persistent droughts pose a serious threat to the economic well-  
13 being, public health, natural resources, and the environment of the City, and that action taken  
14 by the City to reduce emissions of greenhouse gases will have far reaching effects by  
15 encouraging its citizens and other cities and counties and the State of California, among  
16 others, to pursue similar actions.

17 B. A public purpose will be served by using special tax districts to finance the  
18 installation of energy efficiency and renewable energy capital improvements to residential,  
19 commercial, industrial, or other property.

20 C. Growing population, climate change, and the need to protect and grow the City's  
21 economy while protecting and restoring fish and wildlife habitats makes it essential that the  
22 City and County manage its water resources as efficiently as possible.

23 D. Article X, Section 2 of the California Constitution declares: "It is hereby declared  
24 that because of the conditions prevailing in this State the general welfare requires that the  
25 water resources of the State be put to beneficial use to the fullest extent of which they are

1 capable, and that the waste or unreasonable use or unreasonable method of use of water be  
2 prevented, and that the conservation of such waters is to be exercised with a view to the  
3 reasonable and beneficial use thereof in the interest of the people and for the public welfare."

4 E. This Board of Supervisors has passed Ordinance Nos. 76-09 and 77-09 to adopt  
5 new rules for the installation and/or retrofitting of privately-owned water conservation devices  
6 to better "allow San Francisco's economy and population to prosper without placing additional  
7 demands on this valuable resource."

8 F. Reduced water use through conservation provides significant energy and  
9 environmental benefits, and can help protect water quality, improve streamflows, and reduce  
10 greenhouse gas emissions.

11 G. The City continues to pursue the improved operation of its stormwater and  
12 wastewater management systems to better safeguard bodies of water within and in proximity  
13 to the City.

14 H. Although many of these potential improvements to the City's stormwater and  
15 wastewater management systems focus on public infrastructure, there are also improvements  
16 to privately-owned property that would assist in the efficient and effective operation of the  
17 City's water treatment and management systems.

18 I. There are many water conservation practices that produce significant energy and  
19 other resource savings that should be encouraged as a matter of state policy, and the Board  
20 of Supervisors declares that a public purpose will be served by using special taxes to finance  
21 the installation of water conservation and pollution control improvements that are attached to  
22 residential, commercial, industrial, or other property; and,

23 WHEREAS, This Board of Supervisors, pursuant to the written request of at least two  
24 members of the Board of Supervisors, now desires to proceed with the establishment of a  
25 City-wide special tax district in order to finance and refinance the acquisition, installation and

1 improvement of energy efficiency, water conservation and renewable energy improvements to  
2 or on real property and in buildings, whether such real property or buildings are privately or  
3 publicly owned; and,

4 WHEREAS, This Board of Supervisors wishes to undertake the proceedings to form  
5 the special tax district under the alternate procedures established by Section 43.10.17 of the  
6 Code, pursuant to which a special tax district may initially consist solely of territory proposed  
7 for annexation to the special tax district in the future, with the condition that a parcel or parcels  
8 within that territory may be annexed to the special tax district and subjected to the special tax  
9 only with the unanimous approval of the owner or owners of such parcel or parcels at the time  
10 that such parcel or those parcels are annexed or in compliance with other procedures  
11 established by the Code; and,

12 WHEREAS, This Board of Supervisors wishes to undertake the proceedings to  
13 authorize the issuance of bonded indebtedness for the special tax district under the alternate  
14 procedure established by Section 43.10.18 of the Code, pursuant to which the proposition to  
15 authorize bonded indebtedness may be approved by the owner or owners of a parcel or  
16 parcels of property at the time that the parcel or parcels are annexed to the special tax district  
17 pursuant to the unanimous approval described in 43.10.17 of the Code or in compliance with  
18 other procedures established by the Code, and pursuant to which no additional hearings or  
19 procedures are required, and each such unanimous approval shall be deemed to constitute a  
20 unanimous vote in favor of such proposition; now, therefore, be it

21 RESOLVED, That this Board of Supervisors proposes to conduct proceedings to  
22 establish a special tax district pursuant to the alternate procedures established in  
23 Section 43.10.17 of the Code; and, be it

1 FURTHER RESOLVED, That the name proposed for the special tax district is City and  
2 County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable  
3 Financing) (the "Special Tax District"); and, be it

4 FURTHER RESOLVED, That the proposed boundaries of the Special Tax District are  
5 as shown on the map of it on file with the Clerk of the Board of Supervisors, which boundaries  
6 are hereby preliminarily approved and to which map reference is hereby made for further  
7 particulars. The Special Tax District shall initially consist solely of territory proposed for  
8 annexation to the Special Tax District in the future, with the condition that a parcel or parcels  
9 within that territory may be annexed to the Special Tax District and subjected to a special tax  
10 only with the unanimous approval of the owner or owners of such parcel or parcels at the time  
11 that such parcel or those parcels are annexed or in compliance with other procedures  
12 established by the Code; and, be it

13 FURTHER RESOLVED, That the Clerk of the Board of Supervisors is hereby directed  
14 to record, or cause to be recorded, the map of the boundaries of the Special Tax District in the  
15 office of the Recorder of the City and County of San Francisco within 15 days of the date of  
16 adoption of this Resolution; and, be it

17 FURTHER RESOLVED, That the type of facilities proposed to be financed by the  
18 Special Tax District and pursuant to the Code shall consist of those listed as facilities on  
19 Exhibit A hereto and hereby incorporated herein (the "Facilities"); and, be it

20 FURTHER RESOLVED, That except to the extent that funds are otherwise available,  
21 the City will levy a special tax (the "Special Tax") to pay directly for the Facilities and/or to pay  
22 the principal and interest on bonds of the City issued to finance the Facilities; and, be it

23 FURTHER RESOLVED, That the Special Tax will be secured by recordation of a  
24 continuing lien against all non-exempt real property in the Special Tax District, will be levied  
25 annually within the Special Tax District, and collected in the same manner as ordinary ad

1 valorem property taxes, or in such other manner as this Board of Supervisors or its designee  
2 shall determine, including direct billing of the affected property owners; and, be it

3 FURTHER RESOLVED, That the proposed method of apportionment of the Special  
4 Tax among the parcels of real property within the Special Tax is described in Exhibit B  
5 attached hereto and hereby incorporated herein (the "Method of Apportionment"). Pursuant to  
6 Section 43.10.17, the rate or rates of the Special Tax applicable to a parcel or parcels in the  
7 Special Tax District shall be specified in the unanimous approval as described below relating  
8 to such parcel or parcels or in compliance with other procedures established by the Code;  
9 and, be it

10 FURTHER RESOLVED, That this Board of Supervisors hereby finds that the provisions  
11 of Section 53313.6, 53313.7 and 53313.9 of the Act (relating to adjustments to *ad valorem*  
12 property taxes and schools financed by a special tax district) are inapplicable to the proposed  
13 Special Tax District; and, be it

14 FURTHER RESOLVED, That the Special Tax shall be levied on a parcel or parcels in  
15 the Special Tax District only with the written unanimous approval of the owner or owners of  
16 the parcel or parcels to their annexation to the Special Tax District or in compliance with other  
17 procedures established by the Code, without any requirement for further public hearings or  
18 additional proceedings. The unanimous approval shall be in substantially the form and  
19 substance of the Unanimous Approval attached hereto as Exhibit C, or such other form  
20 authorized by the Director of the Office of Public Finance; and, be it

21 FURTHER RESOLVED, That it is the intention of this Board of Supervisors, acting as  
22 the legislative body for the Special Tax District, to cause bonds of the City to be issued for the  
23 Special Tax District pursuant to the Code to finance and refinance in whole or in part the  
24 construction, installation and/or acquisition of the Facilities. The special tax bonds (including  
25 special tax bonds issued for any improvement area) shall be in the aggregate principal

1 amount of not to exceed \$150,000,000, shall be issued in such series and bear interest  
2 payable semi-annually or in such other manner as this Board of Supervisors shall determine,  
3 at a rate not to exceed the maximum rate of interest as may be authorized by applicable law  
4 at the time of sale of such bonds, and shall mature not to exceed 40 years from the date of  
5 the issuance thereof; and, be it

6 **FURTHER RESOLVED**, That the Director of the Office of Public Finance, or the  
7 designee of such officer, is hereby directed to study said proposed Facilities and to make, or  
8 cause to be made, and file with the Clerk of the Board of Supervisors a report in writing (the  
9 "Special Tax District Report") presenting the following:

10 (a) A description of the Facilities by type which will be financed by the Special Tax  
11 District.

12 (b) An estimate of the fair and reasonable cost of the Facilities, including the costs of  
13 the proposed bond financing and all other related costs as provided in Section 53345.3 of the  
14 Act.

15 The Special Tax District Report shall be made a part of the record of the public hearing  
16 specified below; and, be it

17 **FURTHER RESOLVED**, That Tuesday, January \_\_\_\_, 2010 at 2:00 p.m. or as soon as  
18 possible thereafter, in the Board of Supervisors' Chambers, 1 Dr. Carlton B. Goodlett Place,  
19 City Hall, San Francisco, California, be, and the same are hereby appointed and fixed as the  
20 time and place when and where this Board of Supervisors, as legislative body for the Special  
21 Tax District, will conduct a public hearing on the establishment of the Special Tax District and  
22 consider and finally determine whether the public interest, convenience and necessity require  
23 the formation of the Special Tax District and the levy of the Special Tax; and, be it

24 **FURTHER RESOLVED**, That the Clerk of the Board of Supervisors is hereby directed  
25 to cause notice of the public hearing to be given by publication one time in a newspaper



1 published in the area of the Special Tax District. The publication shall be completed at least  
2 seven days before the date of the public hearing specified above. The notice shall be  
3 substantially in the form specified in Section 53322 of the Act; and, be it

4 FURTHER RESOLVED, That pursuant to Section 43.10.19 of the Code, in connection  
5 with the annexation of a parcel or parcels to the Special Tax District pursuant to the alternate  
6 and independent procedure set forth in Section 43.10.17 of the Code and the conduct of an  
7 election on the proposition to authorize bonded indebtedness pursuant to the alternate and  
8 independent procedure set forth in Section 43.10.18 of the Code, the City may, without  
9 additional hearings or procedures, designate a parcel or parcels as an improvement area  
10 within the Special Tax District. Each improvement area will be known as "Improvement Area  
11 No. \_\_\_\_ of City and County of San Francisco Special Tax District No. 2009-1 (San Francisco  
12 Sustainable Financing)." After the designation of a parcel or parcels as an improvement area,  
13 all proceedings for approval of the appropriations limit, the rate, method of apportionment and  
14 manner of collection of special tax and the authorization to incur bonded indebtedness for  
15 such parcel or parcels shall apply only to the improvement area; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors reserves to itself the right and  
17 authority set forth in Section 43344.1 of the Act, subject to any limitations set forth in any bond  
18 resolution, fiscal agent agreement or trust indenture related to the issuance of bonds; and, be  
19 it

20 FURTHER RESOLVED, That the Director of the Office of Public Finance, or a  
21 designee thereof, is hereby authorized and directed to select a trustee or fiscal agent for any  
22 bonds issued for the Special Tax District on such terms as are acceptable to the Director of  
23 the Office of Public Finance; and, be it

24 FURTHER RESOLVED, That the Mayor, the Controller, the City Attorney, the Director  
25 of the Office of Public Finance, designees of the Director of the Office of Public Finance, the

1 Clerk of the Board of Supervisors and all other officers and agents of the City are hereby  
2 authorized and directed to take all actions necessary or advisable to give effect to the  
3 transactions contemplated by this Resolution; and, be it

4 FURTHER RESOLVED, That this Board of Supervisors proposes to conduct  
5 proceedings to establish a special tax district pursuant to the alternate procedures established  
6 in Section 43.10.17 of the Code; and, be it

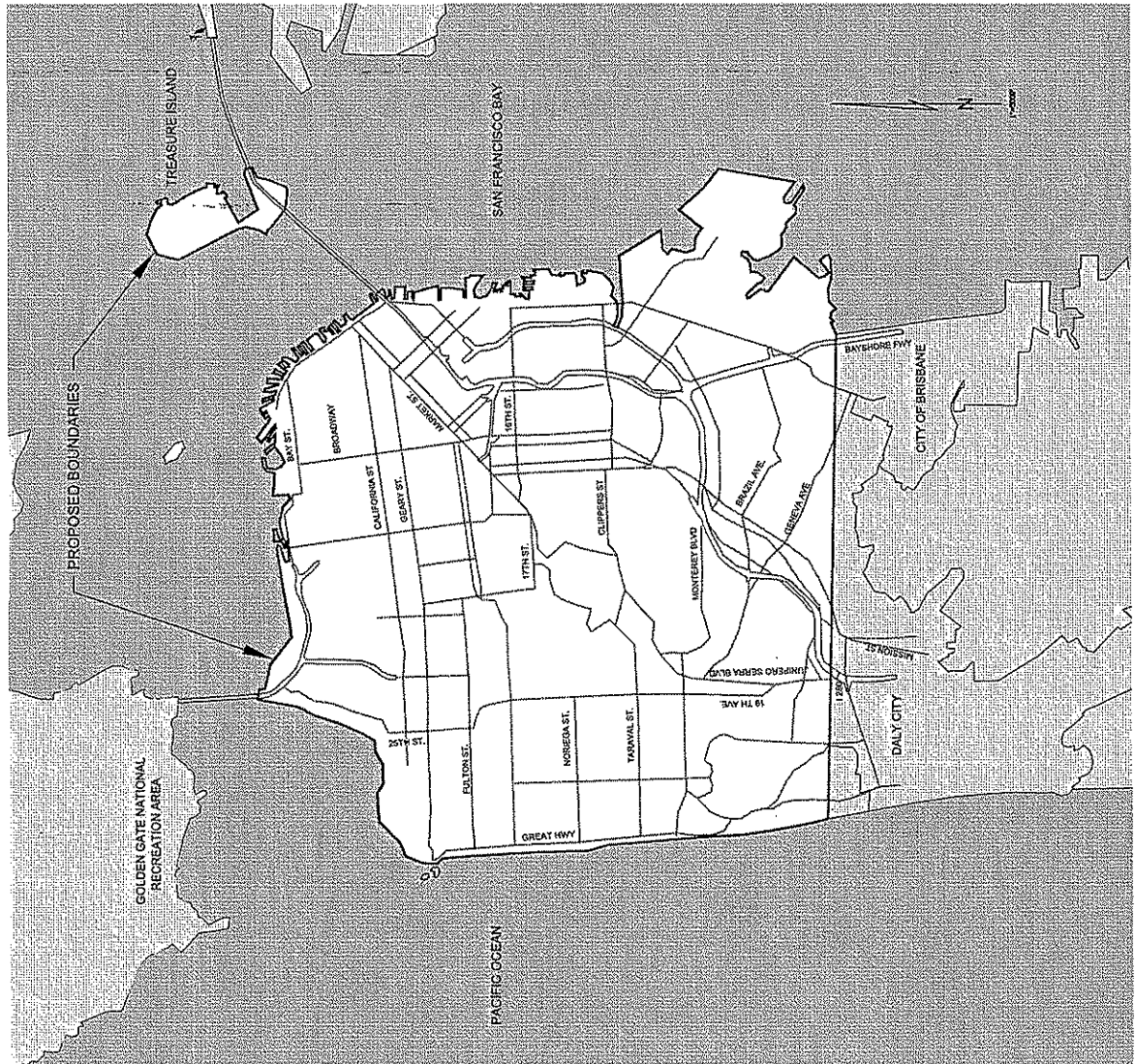
7 FURTHER RESOLVED, That this Resolution shall in no way obligate the Board of  
8 Supervisors of the City to form the Special Tax District. The formation of the Special Tax  
9 District shall be subject to the approval of this Board of Supervisors by resolution following the  
10 holding of the public hearing referred to above.

11  
12  
13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By: \_\_\_\_\_

16 MARK D. BLAKE  
17 Deputy City Attorney  
18  
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22  
23  
24  
25

**Proposed Boundaries of  
CITY AND COUNTY OF SAN FRANCISCO  
Special Tax District No. 2009-1  
(San Francisco Sustainable Financing),  
State of California**



1. Filed in the office of the Clerk of the Board of Supervisors of the City and County of San Francisco this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Board of Supervisors

2. I hereby certify that the within map showing proposed boundaries of City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing), State of California, was approved by the Board of Supervisors of the City and County of San Francisco, at a meeting thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by its Resolution No. \_\_\_\_\_.

\_\_\_\_\_  
County Clerk

3. Filed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ m. In Book \_\_\_\_\_ of Maps of Assessment and Community Facilities Districts at Page \_\_\_\_\_ in the office of the County Assessor-Recorder in the City and County of San Francisco, State of California.

\_\_\_\_\_  
County Recorder  
City and County of San Francisco

**Future Annexation Area:** City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) (the "Special Tax District") initially consists solely of territory proposed for annexation to the Special Tax District in the future. Upon recordation of a Notice of Special Tax Lien pursuant to Section 3114.5 of the Streets and Highways Code of the State of California, a continuing lien to secure the levy of a special tax will attach to all nonexempt real property in the Special Tax District.

**Improvement Areas:** In connection with the annexation of a parcel or parcels to the Special Tax District, a parcel or parcels may be designated as an improvement area within the Special Tax District to be known as "Improvement Area No. \_\_\_\_\_ of City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing)". The designation of a parcel or parcels as an improvement area will be reflected in the Notice of Special Tax Lien.

## 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

The Facilities shown below are proposed to be financed and refinanced by the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) (the "Special Tax District").

#### FACILITIES

It is intended that the Special Tax District will be authorized to finance and refinance all or a portion of the costs of any of the following types of facilities:

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.

#### OTHER

The Special Tax District may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the Special Tax District and the bonds.
3. Any other costs or fees authorized by the Code.

## EXHIBIT B

### CITY AND COUNTY OF SAN FRANCISCO SPECIAL TAX DISTRICT NO. 2009-1 (SAN FRANCISCO SUSTAINABLE FINANCING)

#### METHOD OF APPORTIONMENT OF SPECIAL TAX

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A Special Tax applicable to each Assessor's Parcel in the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) shall be levied and collected according to the tax liability determined by the City or its designee, through the application of the appropriate amount or rate for Taxable Property, as described below. All property annexed into the Special Tax District, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided unless a separate Method of Apportionment of Special Tax is adopted for an Improvement Area that is established within the Special Tax District.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

**"Administrative Expenses"** means costs directly related to the administration of the Special Tax District including: the actual costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by a City employee or consultant or both) and the actual costs of collecting the Special Taxes (whether by the County or otherwise); the actual costs of remitting the Special Taxes to the fiscal agent; actual costs of the fiscal agent (including its legal counsel) in the discharge of its duties under the Fiscal Agent Agreement; the actual costs of the City or its designee of complying with the disclosure provisions of the and the Fiscal Agent Agreement, including those related to public inquiries regarding the Special Tax and disclosures to bond holders; the actual costs of the City or its designee related to an appeal of the Special Tax; any amounts required to be rebated to the federal government; and an allocable share of the salaries of the City staff directly related to the foregoing and a proportionate amount of City general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of the Special Tax District, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, and the costs of prosecuting foreclosure of delinquent Special Taxes.

**"Administrator"** shall mean the Director of the Office of Public Finance of the City or a person or firm designated by the Director to administer the Special Tax according to this Method of Apportionment of Special Tax.

**“Assessor’s Parcel” or “Parcel”** means a lot or parcel shown on a County Assessor’s Parcel Map with an assigned County Assessor’s Parcel number.

**“Asset Component”** means, for a particular Parcel, that portion of the Bond principal that is, or is expected to be, used to fund Authorized Improvements and not Bond Costs.

**“Authorized Improvements”** means the improvements authorized to be financed, in whole or in part, by Special Tax proceeds.

**“Board of Supervisors”** means the Board of Supervisors of the City and County of San Francisco, acting as the legislative body of the Special Tax District.

**“Bonds”** means bonds or other debt (as defined in the Code), whether in one or more series, issued, insured or assumed by the Special Tax District related to funding Authorized Improvements.

**“Bond Costs”** means costs paid or expected to be paid from Bond proceeds that are not directly related to the costs of Authorized Improvements, including but not limited to, Bond issuance costs, pre-funded Administrative Expenses, capitalized interest, and costs associated with a letter of credit or other such security vehicle. Notwithstanding the foregoing, Bond Costs shall not include amounts deposited into a reserve fund if there is a proportional reduction in the reserve fund when a Mandatory Bond Call takes place.

**“City”** means the City and County of San Francisco, California.

**“Code”** means Chapter 43, Article X of the San Francisco Administrative Code, which incorporates the Act.

**“County”** means the City and County of San Francisco, California.

**“Expected Maximum Special Tax”** means, for a Parcel subject to a Mandatory Completion Date, that Maximum Special Tax shown in the Rate Supplement that would be levied and collected if all Authorized Improvements that were expected to be funded from Bond proceeds are completed by the Mandatory Completion Date.

**“Fiscal Agent Agreement”** means the fiscal agent agreement, bond indenture or other agreement between the City and the fiscal agent, as it may be amended or supplemented from time to time, governing the issuance of Bonds.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Improvement Area”** means a geographic area that, upon annexation to the Special Tax District, is identified as an improvement area as provided in Section 43.10.19 of the Code.

**“Mandatory Bond Call”** means a Bond call that, pursuant to the Fiscal Agent Agreement, is required to take place after the Mandatory Completion Date if some or all of the Authorized Improvements for a Parcel have not been completed.

**“Mandatory Completion Date”** means, for certain Parcels within the Special Tax District, the date by which the Authorized Improvements being funded on the Parcels must be completed. The Mandatory Completion Date shall be identified on the Rate Supplement for each Parcel to which such a date is applicable.

**“Maximum Special Tax”** means the greatest amount of Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year as set forth in the Rate Supplement for the Parcel, and as may be adjusted pursuant to Section C below.

**“Non-Asset Maximum Special Tax”** means the Maximum Special Tax identified in the Rate Supplement for Parcels subject to a Mandatory Completion Date which, after the full Asset Component of the Bonds has been called, would become the effective Maximum Special Tax for the Parcel.

**“Public Property”** means any property within the boundaries of the Special Tax District that is owned by or irrevocably offered for dedication to the federal government, State of California, City, or other local governments or public agencies.

**“Rate and Method”** means, collectively for any Parcel within the Special Tax District, this Method of Apportionment of Special Tax and the Rate Supplement for such Parcel.

**“Rate Supplement”** means, for any Parcel within the Special Tax District, the Rate Supplement to this Method of Apportionment of Special Tax which was included as Appendix 3 of the Unanimous Approval Form when the Parcel was annexed into the Special Tax District and which, for Parcels for which a Mandatory Completion Date is identified, may be recalculated pursuant to Section C below.

**“Special Tax”** means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

**“Special Tax District”** means the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing).

**“Special Tax Requirement”** means the amount that must be levied against a Parcel of Taxable Property in any Fiscal Year (i) to pay principal and interest on Bonds which are due in the calendar year which begins in such Fiscal Year; (ii) to pay principal and interest on the Bonds in connection with a Mandatory Bond Call; (ii) to create or replenish reserve funds; (iii) to make lease payments on any lease used to finance Authorized Improvements; (iv) to reimburse the City for monies advanced to pay formation and/or administration costs of the Special Tax District, Authorized Improvements costs, debt service on Bonds, and any other costs related to the Special Tax District; (v) to cure any delinquencies in the payment of principal or interest on Bonds which have occurred in any prior Fiscal Year or (based on delinquencies in the payment of Special Taxes which have already taken place) or are expected to occur in the Fiscal Year in which the tax will be collected;

(vi) to pay Administrative Expenses; and (vii) to pay the costs of Authorized Improvements to be funded directly from Special Tax proceeds. In the City's sole and absolute discretion, the amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by (i) proceeds from the collection of penalties associated with delinquent Special Taxes collected from the Parcel, and (ii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**"Taxable Property"** means all of the Assessor's Parcels within the boundaries of the Special Tax District which are not exempt from the Special Tax pursuant to law or Section F below.

**"Unanimous Approval Form"** means that form executed by the record owner of fee title to a Parcel annexed into the Special Tax District that constitutes the property owner's approval and unanimous vote in favor of annexing into the Special Tax District, the issuance of Bonds for the Special Tax District and the levy of the Special Tax against his/her Parcel pursuant to the Rate and Method.

#### **B. DATA FOR ADMINISTRATION OF SPECIAL TAX**

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor's Parcel numbers for all Parcels of Taxable Property within the Special Tax District and determine the Special Tax Requirement for each Parcel of Taxable Property for the Fiscal Year. The Administrator shall maintain a file that includes a copy of the Rate Supplement for each Parcel of Taxable Property, which shall be used to determine each Parcel's Special Tax Requirement and Maximum Special Tax for the Fiscal Year. In addition, the Administrator shall monitor the Mandatory Completion Date for all Parcels to which such a date applies and, after such Mandatory Completion Date, shall coordinate with the City to monitor when a Mandatory Bond Call takes place and recalculate the Maximum Special Tax for the Parcel.

If it is determined in any Fiscal Year that a Parcel to which a Maximum Special Tax had been assigned in a Unanimous Approval Form has been subdivided, the Administrator shall assign the Maximum Special Tax to the newly-created Parcel on which the residential or non-residential structure for which Authorized Improvements were funded by the Bonds is located. If multiple Parcels have been created and the original structure no longer exists, the Administrator shall allocate the Special Tax on a per-acre basis to each of the new Parcels unless the City, in its sole discretion, determines that the Special Tax should be allocated in an alternate manner to the new Parcels.

#### **C. MAXIMUM SPECIAL TAX**

In any Fiscal Year, the Maximum Special Tax for a Parcel of Taxable Property within the Special Tax District shall be the amount identified in the Rate Supplement for the Parcel for that Fiscal Year, subject to the limitations set forth below. Generally, the Maximum Special Tax for a Parcel shall be the amount required on an annual basis to pay debt service on Bonds issued to fund Authorized Improvements for that Parcel plus Administrative Expenses.



For a Parcel for which a Mandatory Completion Date is identified in the Rate Supplement, the Maximum Special Tax shall be the Expected Maximum Special Tax unless and until a Mandatory Bond Call takes place, after which time the Maximum Special Tax shall be determined as follows:

***If the entire Asset Component of the Bonds has been called***, the Maximum Special Tax for the Parcel for the next Fiscal Year and all subsequent Fiscal Years shall be the Non-Asset Maximum Special Tax identified in the Rate Supplement.

***If only a portion of the Asset Component of Bonds has been called***, the Maximum Special Tax for the Parcel shall be determined by application of the following steps:

- Step 1.* Identify the total Asset Component for the Parcel.
- Step 2.* Determine the amount expended on Authorized Improvements to the Parcel.
- Step 3.* Divide the amount from Step 2 by the amount from Step 1 to determine a percentage.
- Step 4.* For the next Fiscal Year after the Mandatory Bond Call and all subsequent Fiscal Years, subtract the Non-Asset Maximum Special Tax from the Expected Maximum Special Tax to determine that portion of the Maximum Special Tax that is associated with the Asset Component for the Parcel.
- Step 5.* Multiply the amount determined in Step 4 by the percentage calculated in Step 3.
- Step 6.* For the next Fiscal Year after the Mandatory Bond Call and all subsequent Fiscal Years add the Non-Asset Maximum Special Tax for the Parcel and the amount determined in Step 5 to determine the new Maximum Special Tax that shall apply to the Parcel.

*When only a portion of the Asset Component has been called and an adjusted Maximum Special Tax has been determined pursuant to the steps set forth above, a revised Notice of Special Tax lien shall be recorded against the Parcel that includes a Rate Supplement reflecting the adjusted Maximum Special Tax rates for each remaining Fiscal Year.*

*The provisions of this Section C relating to the recalculation of the Maximum Special Tax following a Mandatory Bond Call may be amended as it applies to a particular Parcel by the Rate Supplement approved by the owner of such Parcel.*

#### **D. METHOD OF LEVY OF THE SPECIAL TAX**

Each Fiscal Year, the Administrator shall determine the Special Tax Requirement for each Parcel of Taxable Property and levy the Special Tax in the amount needed to pay the Special Tax

Requirement, which amount shall never exceed the Maximum Special Tax for the Parcel in that Fiscal Year.

Under no circumstances will the Special Tax levied in any Fiscal Year against any residential Parcel be increased as a consequence of delinquency or default by the owner or owners of any other Parcel or Parcels within the Special Tax District by more than 10% above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

**E. MANNER OF COLLECTION OF SPECIAL TAX**

The Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section G below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Special Taxes through foreclosure or other available methods.

The Special Tax for a Parcel of Taxable Property shall be levied and collected until the Bonds are paid in full or such longer period of time provided in the Unanimous Approval Form for the Parcel, except that a Special Tax that was lawfully levied in or before the final tax year identified in the Unanimous Approval Form and that remains delinquent may be collected in subsequent years.

**F. EXEMPTIONS**

Notwithstanding any other provision of this Method of Apportionment of Special Tax, no Special Tax shall be levied on Public Property, except as otherwise provided in the Code.

**G. PREPAYMENT OF SPECIAL TAX**

The Special Tax obligation applicable to an Assessor's Parcel in the Special Tax District may be prepaid and the obligation of the Parcel to pay the Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. A Parcel owner who intends to prepay the Special Tax obligation shall provide the Administrator with written notice of intent to prepay. Within 7 days of receipt of such written notice, the Administrator shall confirm to such owner the prepayment amount for the Parcel. Prepayment must be made not less than 50 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes.

The Prepayment Amount for any Parcel shall be the sum of the Maximum Special Taxes applicable to the Parcel in all Fiscal Years for which a Special Tax has not yet been levied. If a Special Tax has been levied on, but not yet collected from, the Parcel at the time of prepayment, the outstanding Special Tax payment must be paid as part of the secured property tax bill unless the amount is stripped for the tax roll as part of a foreclosure proceeding by the City.

*Once a prepayment has been received, a Notice of Cancellation of Special Tax Lien shall be recorded against the Parcel. However, such Notice shall not be recorded until all Special Taxes levied on the Parcel in the current or prior Fiscal Years have been collected.*

**H. INTERPRETATION OF SPECIAL TAX FORMULA**

The City may interpret, clarify, and revise this Method of Apportionment of Special Tax to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, that does not materially affect the levy and collection of the Special Taxes and any security for any Bonds. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Method of Apportionment of Special Tax.

The City and the owner of a Parcel may amend this Method of Apportionment of Special Tax as it applies to that Parcel in the Rate Supplement applicable to that Parcel.



CITY AND COUNTY OF SAN FRANCISCO  
Special Tax District No. 2009-1  
(San Francisco Sustainable Financing)

FORM OF UNANIMOUS APPROVAL

UNANIMOUS APPROVAL

CITY AND COUNTY OF SAN FRANCISCO  
SPECIAL TAX DISTRICT NO. 2009-1  
(SAN FRANCISCO SUSTAINABLE FINANCING)

\_\_\_\_\_, 20\_\_

To the Honorable Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall  
San Francisco, CA 94102

Members of the Board of Supervisors:

The Board of Supervisors of the City and County of San Francisco (the "City") has added Chapter 43, Article X to the San Francisco Administrative Code (the "Code") and, 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 City has formed the "City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax District").

The Property Owner (as defined below) hereby states and certifies, under penalty of perjury, as follows:

1. Property Owner. This Unanimous Approval is submitted by the record owner(s) (the "Property Owner") of the fee title to the real property identified below (the "Property"). The Property Owner has supplied to the City current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute this Unanimous Approval.
2. Unanimous Approval. This Unanimous Approval constitutes the approval and unanimous vote of the Property Owner in favor of the following matters for the purposes of Sections 43.10.17 and 43.10.18 of the Code and Article XIII A of the California Constitution:
  - a. Annexation: The annexation of the Property to the Special Tax District for the purpose of financing the acquisition, installation and improvement on the Property of the energy efficiency, water conservation and/or renewable energy improvements described in Appendix 1 hereto and made a part hereof (the "Improvements").

b. Special Tax: The levy of special taxes (the "Special Taxes") on the Property to finance the Improvements, according to (A) the Method of Apportionment of Special Taxes, attached as Appendix 2 and (B) the Rate Supplement to Method of Apportionment of Special Taxes, attached as Appendix 3 (collectively, the "Rate and Method").

c. Bonds and Appropriations Limit: The issuance of bonded indebtedness for the Special Tax District in an aggregate principal amount not to exceed \$ \_\_\_\_\_ and an appropriations limit for the Special Tax District of \$ \_\_\_\_\_.

3. Waivers, Acknowledgment and Agreement. The Property Owner hereby waives its right to repeal the Special Tax by initiative or any other action and any necessity, requirement or right to further public hearings or election with respect to the annexation of the Property to the Special Tax District or the levy of the Special Taxes on the Property.

The Property Owner hereby acknowledges that the City has formed the Special Tax District solely for the purpose of assisting the owners of property in the City with the financing of renewable energy, water conservation and energy efficiency improvements, and that the City has no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Improvements. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation, financing, refinancing and maintenance of the Improvements. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Special Tax according to the Rate and Method regardless of whether the Improvements are properly installed, operated or maintained as expected.

4. Recordation of Notice of Special Tax Lien. The Property Owner hereby authorizes and directs the Clerk of the Board of Supervisors to execute and cause to be recorded in the office of the Recorder of the City and County of San Francisco a Notice of Special Tax Lien as required by Section 43.10.17 of the Code, which shall give notice that a lien to secure payment of a special tax is imposed by the City on behalf of the Special Tax District. The Notice of Special Tax Lien shall include the Rate and Method and this Unanimous Approval as exhibits thereto.

5. Notice. To the extent required by applicable law, the Property Owner hereby agrees to provide written notice to any subsequent purchaser of the Property of the annexation of the Property to the Special Tax District and of the authority of the City to levy the Special Taxes on the Property pursuant to the Rate and Method.

6. The Property. The Property subject to this Unanimous Approval and to be annexed to the Special Tax District consists of the following:

<i>Property Address:</i>	_____
	_____
<i>City and County of San Francisco Assessors Parcel(s) Number(s):</i>	_____

The foregoing Unanimous Approval is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in \_\_\_\_\_, California.

The name of the record owner of the Property is:

\_\_\_\_\_

The following are authorized to sign this Unanimous Approval on behalf of the Property Owner:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



## ACKNOWLEDGMENT

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT

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County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

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foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

APPENDIX 1

CITY AND COUNTY OF SAN FRANCISCO  
SPECIAL TAX DISTRICT NO. 2009-1  
(SAN FRANCISCO SUSTAINABLE FINANCING)

DESCRIPTION OF IMPROVEMENTS

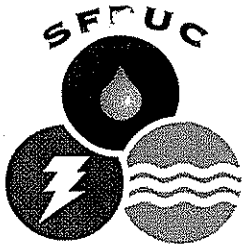
The Improvements are described in the attached invoice.

APPENDIX 2

CITY AND COUNTY OF SAN FRANCISCO  
SPECIAL TAX DISTRICT NO. 2009-1  
(SAN FRANCISCO SUSTAINABLE FINANCING)

METHOD OF APPORTIONMENT OF SPECIAL TAX





WATER  
HETCH HETCHY  
WATER & POWER  
CLEAN WATER

# SAN FRANCISCO PUBLIC UTILITIES COMMISSION



1155 MARKET STREET, 11<sup>TH</sup> FLOOR • SAN FRANCISCO, CA • 94103  
TEL. (415) 934-5701 • FAX (415) 554-3424

## MEMORANDUM

October 7, 2009

To: Honorable Members, Board of Supervisors

From: Michael Martin, Development Project Manager

Re: Proposed energy and water retrofit financing program, under development as authorized by the San Francisco Special Tax Financing Law

### 1. Executive Summary

The memorandum is provided in connection with the consideration by the Board of Supervisors of two pieces of legislation initiating the establishment of the San Francisco Sustainable Financing Program (the "Program"). One is a resolution declaring the intent to form a special tax district as described in this memorandum, the second is a resolution declaring the intent to incur bonded indebtedness on behalf of the district (together, the "Initial Resolutions"). This memorandum provides general background on the overall efforts to design and implement the Program; please note that a separate memorandum from the Director of the Controller's Office of Public Finance that provides greater detail on these specific resolutions and the special tax district financial structure (the "Public Finance Memorandum") is also being submitted in support of this legislative package.

Under the proposed Program qualifying property owners within the City would be able to obtain financing for energy and water efficiency and renewable energy retrofits of their buildings in exchange for agreeing to repay those funds as an added special tax line item on their property tax bill. The funds for the projects would be provided through the sale of bonds backed by the special tax revenues.

As described in Section 4 below these Initial Resolutions are a procedural step that sets the stage for the public hearings and further legislation needed to form the district and implement the Program.

## 2. Program Description

As noted above, the proposed Program will require further legislative action prior to implementation. Those subsequent actions will include the financial, contractual and program design details that together will create a cohesive and versatile program that will be targeted at the widest possible implementation of cost-effective energy and water retrofits.

When established, the district initially would not include any specific properties. The legislation forming the district would enable individual properties to opt into the district by the filing of documents authorizing the levy of a special tax against the property in amounts required to repay the financing of eligible improvements to the property.

To participate in the program, a property owner would apply to the City to finance a set of projects identified after an energy and water use audit. Upon approval of the application documents, the completion of the related project, and the execution of documents authorizing the levy of the special tax against the property the City would then finance the net cost of the project after rebates and other incentives.

## 3. Program Design

The federal and state governments have recently issued criteria for the kinds of programs that they will be seeking to assist through grants and other potential credit support. As this support will help to provide an affordable, successful program the Program team is working to define our own program criteria in accordance with these statements.

For informational purposes, the following is a summary of the key characteristics of the Program under development:

### a. Program eligibility

The Program team has developed a set of criteria for use in screening properties for Program eligibility. As the financing is secured by the payment of property taxes, the screening process focuses on the property owner's tax payment history, any outstanding unpaid liens or default notices, and any evidence of foreclosure in the past.

The Program will also establish required ratios between outstanding debt secured by the property (including the proposed financing) and the property's value. Similarly, the program will limit the proposed financing to a percentage of the property's value, most likely 10%.

### b. Project requirements

As developed by City staff, in an approach further endorsed by the federal and state governments, the Program is designed to maximize the implementation of cost-effective improvements to property. The key driver towards this objective will be the requirement of an energy and water audit as a condition to application approval. The standards for these "deep



retrofit” ratings are evolving, and so the program will be designed to take advantage of these advances as they happen.

The audit report would include a detailed list of measures and their potential cost-effectiveness. This report would then serve as a menu by which the applicant could decide which improvements to pursue. As part of the Program’s focus on deep retrofits the funding criteria will require that a certain level of energy efficiency work as part of any financing of solar photovoltaic panels. By encouraging building owners to reduce their electric load before serving it with renewable energy we will be able to achieve greater energy and greenhouse gas reductions on a cost-effective basis.

c. Financial and administrative structure

Pursuant to a competitive solicitation conducted by the Controller’s Office of Public Finance the City has selected Renewable Funding LLC as its administrative and financial partner for the implementation of the Program. Renewable Funding will serve to assist the City in screening applications, monitoring Program compliance, and providing financing as detailed in the contracts to be reviewed by the Board as part of the program approval package. Renewable Funding is uniquely qualified in this regard, having provided similar services for the City of Berkeley with respect to the rollout of its groundbreaking program under the same legal structure as is being pursued under the Program.

The financial challenge for this type of program is providing funding as efficiently and in as timely a manner as possible. On the one hand the Program’s borrowing a large amount funds up front in anticipation of future financing applications would be costly as the unused funds generate interest charges. On the other hand requiring people to wait until a critical mass of financings can be bundled into a bond issuance could cause disruptions in the market as projects are delayed to take advantage of such a financing structure.

The agreement under negotiation with Renewable Funding seeks to bridge the gap between these two extremes. As in the Berkeley program, Renewable Funding will be obligated to make funding available to purchase special tax bonds as projects are completed. In a further step forward from the Berkeley model the City’s agreement sets forth the process and responsibilities by which the parties will cooperate in a remarketing of the project “microbonds” after they are initially purchased by Renewable Funding. The proceeds of that remarketing would be used by Renewable Funding to replenish the “just-in-time” financing commitment on an efficient basis.

The success of this financial approach will allow the program to reach scale according to demand while keeping borrowing costs down. Over time, as the fundamental value of these programs become more widely understood in the investor community, a sustainable market-based program will be able to pass along additional savings to the Program participants.

d. Funding strategy

The Program has been designed to avoid the need for any General Fund subsidy from the City. As noted above, the Program’s market-based strategy will provide opportunities for greater

savings as the pool of borrowers grows and investors gain a better understanding of the fundamentals of the Program.

In addition, the federal and state governments are making grant funding opportunities available for these types of programs that the City will be seeking in an effort to defray some of application and borrowing costs of the Program. There are further credit enhancement proposals being considered by the federal government as well, and the Program will be designed to take advantage of those opportunities if and when they are brought forward. These grants and credit enhancements could allow the Program to be further calibrated to support the City's efforts to develop its green workforce and to reduce or eliminate barriers to entry for lower-income building owners. In addition, these grants would smooth the initial Program implementation process by reducing the cost of the program to the initial adopters and allowing more projects to reach the threshold of cost-effectiveness.

#### 4. Legislative Action

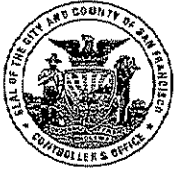
As described in the executive summary and in greater detail in the Public Finance Memorandum, the Initial Resolutions are the first part of a multistep process to form the district. In effect they set the stage for a public hearing on the proposal and the subsequent consideration of the approval package of legislation, which will include the related Program agreements as well as the terms and conditions governing the program's implementation. Below is a short summary of the two legislative packages proposed in connection with the Program.

##### a. Initial Resolutions

If approved, the Initial Resolutions declare the City's intent to form the special tax district and issue debt on its behalf as described above and in the resolutions. The Initial Resolutions also establish the Program boundaries (i.e. Citywide) and the method by which a property can opt into the special tax district, along with the method by which the property's special tax will be calculated. The Initial Resolutions also set a date for a public hearing before the Board to receive feedback on the proposed district.

##### b. Approval package

On or after the date of the public hearing referenced above, the Board will be in a position to consider resolutions relating to the formation of the district, the issuance of district bonds and the Program terms and conditions, along with an ordinance ordering the levy of special taxes. Such legislation will be provided with supporting materials reflecting the overall program approach in time for the Board's consideration of the comments offered at the public hearing. Once this following package of legislation is duly adopted the program will be authorized and ready to begin the implementation phase.



**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:** Nadia Sesay, Director of Public Finance *NS*  
**SUBJECT:** Resolution of Intention to Establish Special Tax District  
Resolution of Intention to Incur Bonded Indebtedness  
**DATE:** October 27, 2009

The Resolution of Intention to Form a District (the "Resolution of Intention") initiates the process to create the proposed district under the City's Special Tax Financing Code as amended (the "Code") and the Mello-Roos Community Facilities District Act of 1982 as amended (the "Act"). The Resolution of Intention names the proposed district the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) (the "Proposed District"); defines the boundaries of the proposed district; describes facilities that would be eligible to be financed by the Proposed District; describes certain procedures of the special tax and a method of apportionment; sets the public hearing date and noticing of the public hearing concerning the Proposed District; and directs the Director of Public Finance to prepare various reports and documents required for district formation.

The Resolution of Intention to Incur Bonded Indebtedness (the "Resolution to Bond") establishes a maximum aggregate amount of bonded indebtedness not to exceed \$150 million financing or refinancing certain facilities, as summarized in an exhibit filed with the Resolution of Intention; establishes certain parameters for any bonded indebtedness financing or refinancing facilities; and sets the public hearing date and noticing of the public hearing on the proposed issuance of indebtedness on behalf of the Proposed District.

The Resolution of Intention and the Resolution to Bond (together, the "Initial Resolutions") set the public hearing date for a regularly scheduled Board meeting in January 2010 to consider the above matters.

Please note that a separate memorandum from Mike Martin, Development Project Manager at the San Francisco Public Utilities Commission, provides additional background on the overall efforts to design and implement the program (the "Program Memorandum") and is also being submitted in support of this legislative package.

## **Background**

### *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 will 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 will 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 adds Section 43.10.19 to accommodate larger retrofits for affordable multifamily housing and larger commercial buildings.

On October 6, 2009 the Board adopted Resolution No. 387-09 declaring its local goals and policies (the "Policies Resolution") for purposes of the 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 (a "Special Tax District") or a community facilities district (collectively with Special Tax Districts, a "District") established under the Code or the Act.

### *San Francisco Sustainable Financing Program*

As described in the memorandum dated July 21, 2009 accompanying the Policies Resolution, the City distributed a request seeking proposals from qualified firms to administer and finance a City-sponsored financing program for privately-owned sustainability improvements, tentatively called the San Francisco Sustainable Financing Program (the "Program"). As noted above, the Program Memorandum provides additional detail on the design and implementation of the Program.

## **Issuance of Bonded Indebtedness**

The City will facilitate the financing for the Facilities and Facilities will be funded from proceeds derived from the issuance and sale of special tax bonds. The Board, acting as the legislative body of the Special Tax District, and the eligible property owner voters in the Special Tax District would need to authorize the issuance of special tax bonds financing the Facilities. Upon the completion of certain legislative milestones (see "Additional Information – Next Steps" below) and upon the unanimous approval to annex to the District by each eligible property owner voter, the City will levy and collect annually a special tax secured by a continuing lien on participating property owners' non-exempt real property located in the District. The special tax

will be levied and collected in the same manner as ordinary ad valorem property taxes. When recorded, such lien will be superior to any mortgage recorded on the parcel. Because the special tax will finance Facilities on private property and not publicly-owned improvements, interest on any issued bonds will be federally and state taxable.

Any bonds or other indebtedness financing the Facilities would be issued under the Act, the Code and a fiscal agent agreement, for and on behalf of participating property owner voters; and would be payable from special tax revenues according to the method of apportionment (or allotment) of special tax if and when approved by the Board and the eligible property owner voters in the Special Tax District. The proposed method of apportionment is described in Exhibit B (City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) Method of Apportionment submitted with the Resolution of Intention.

#### *Disclosure*

Before issuing any bonds, the City will have recorded a notice of the special tax lien in the City's Office of the Assessor-Recorder. Prospective purchasers of parcels subject to the special tax will be notified of its existence through a statutorily prescribed form (the form of which will be approved by the Board and the eligible property owner voter). The seller must notify any prospective purchaser of a parcel subject to the special tax of the special tax lien in a format also prescribed by statute.

As customarily done with its existing indebtedness, the City, on behalf of the Special Tax District, will covenant for the benefit of bondowners to provide financial and operating information of the Special Tax District in a continuing disclosure certificate. The continuing disclosure certificate also requires the City to provide notices of the occurrence of certain material events. Such City covenants will be made to assist with compliance with federal and state securities laws, namely the Securities and Exchange Commission Rule 15c2-12(b)(5). The City will partner with a third-party special tax consultant that will serve as the initial dissemination agent for the City for disclosable events and continuing annual disclosure.

The City's covenant to provide annual continuing disclosure for the Special Tax District will include the City's audited financial statements; aggregate assessed value of properties in the Special Tax District; total dollar amount of delinquencies in the Special Tax District; property ownership summary; updated tables of special tax lien-to-value ratios or "Values and Value to Burden Ratios"; changes in the method of apportionment; and other related disclosures.

#### **Fiscal and Credit Impacts of a Special Tax District to the City**

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 District. The costs of establishing the proposed district, costs of financing improvements, costs associated with issuing any 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 will be paid from proceeds of the special tax.

While neither the faith and credit nor the general fund of the City is pledged to the security or repayment of the bonds, the City's credit, bonding capacity and cost of borrowing may be affected by the performance of the special tax bonds.

- The City is contemplating a not to exceed \$150 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 debt financing the Program 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 and a minimum ratio of value of property to special tax lien of 10:1. 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 property.
- Because of the nature of the Facilities being financed with special tax bonds, an analysis of the special tax security would include factors not typically included in an analysis of other City obligations, including projected future market prices of energy, water, and wastewater services; eligibility criteria of participants and Facilities; future technological innovations that may render the Facilities obsolete; and/or maintenance of the intended efficiency and conservation gains of Facilities. These factors would be in addition to considerations normally included in assessing direct debt of the City including economic conditions, legal structure and statutory authority, debt service coverage and any reserves, among other factors.
- 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; and perform continuing disclosure as required by federal securities law or otherwise would be appropriate.
- 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 \$251 million in special tax bonds. In addition, the Association of Bay Area Governments or ABAG has issued and outstanding approximately \$49 million in special tax bonds financing projects in the City. These obligations are disclosed to investors and included in the City's overlapping debt.

In designing the Program, the City is considering the above factors to strike an appropriate balance among the cost of borrowing for program participants, administrative and procedural efficiency in reporting and disclosure, and credit and rating exposure of the City within the context of the City's broader capital financing needs. As the Program evolves, the Program Team will update the Board as to the progress in these areas.

### **Additional Information**

The Policies Resolution adopting the local goals and policies was adopted by the Board of Supervisors at its meeting on Tuesday, October 6, 2009. The Board must take the following required actions to establish the District and to issue debt to finance the Facilities.

1. The Board considers and adopts the Initial Resolutions constituting the initiation proceedings for the Special Tax District.
2. The City's Assessor-Recorder Records the boundary map filed with the Resolution of Intention. The Special Tax District consists solely of territory proposed for annexation to the Special Tax District in the future.
3. The Special Tax District Report is prepared and filed with the Board.
4. The Board holds duly noticed Public Hearings on matters concerning the special tax district report and the Initial Resolutions.
5. The Board considers and adopts a second set of legislation:
  - a. Resolution of Formation of the Special Tax District that establishes the District, establishes Facilities, adopts the Method of Apportionment and authorizes the levy of special tax within the District
  - b. Resolution of Necessity to Incur Bonded Indebtedness declares necessity to incur bonded indebtedness and establishes the maximum bonded debt for the District.
6. The Board considers and adopts the Resolution Authorizing Issuance of Special Tax Bonds and Approving Bond-Related Documents
7. The Board considers and adopts the Ordinance Ordering the Levy of Special Taxes providing for the levy of the special taxes on parcels that will annex to the Special Tax District and provides for apportionment and collection of the special taxes.

Upon completion of the above steps, eligible owners of property located in the District and wishing to participate in the Program will provide written consent to place a lien on their property and obligate them to pay special taxes. The appropriations limit for the District, the applicable rate, the method of apportionment and manner of collection of the special tax, and the authorization to incur bonded indebtedness would be approved by the unanimous approval of eligible property owner voters of each parcel or parcels at the time that such parcel or parcels is annexed to the Special Tax District. Upon each eligible property owner's unanimous consent, the City's Assessor-Recorder records the notice of special tax lien of such parcel or parcels' annexation to the District.

The Initial Resolutions will be introduced at the Board of Supervisors meeting on Tuesday, October 27, 2009. Other related documents including the Program Memorandum, the Description of Facilities, the Method of Apportionment, the Boundary Map, and Form of Unanimous Approval will also be submitted.

Please contact me at 554-5956 if you have any questions. Thank you.

Cc: Mark Blake, Deputy City Attorney  
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Angela Calvillo, Clerk of the Board of Supervisors  
Mike Martin, San Francisco Public Utilities Commission  
Johanna Partin, Mayor's Office  
Harvey Rose, Budget Analyst (with enclosures)  
Ben Rosenfield, Controller  
Greg Wagner, Mayor's Budget Director