

1 [Authorizing Certificates of Participation - Rehabilitation Detention Facility Project - Not to
2 Exceed \$215,000,000]

3 **Ordinance authorizing the execution and delivery of Certificates of Participation on a**
4 **tax-exempt or taxable basis evidencing and representing an aggregate principal**
5 **amount of not to exceed \$215,000,000 to finance the costs of acquisition, construction**
6 **and installation of certain additions and improvements for a rehabilitation detention**
7 **facility to be located on property within the City; authorizing the issuance of**
8 **commercial paper notes in advance of the delivery of the Certificates; approving the**
9 **form of Trust Agreement between the City and County of San Francisco and the**
10 **Trustee (including certain indemnities contained therein); authorizing the selection of**
11 **the Trustee by the Director of Public Finance; approving respective forms of a Property**
12 **Lease and a Lease Agreement, each between the City and the Trustee for the lease and**
13 **lease back of all or a portion of certain hospital property and facilities; approving the**
14 **forms of Purchase Contract, Official Notice of Sale and Notice of Intention to Sell**
15 **Certificates; directing the publication of the Notice of Intention to Sell Certificates;**
16 **approving the form of the Preliminary Official Statement and the form and execution of**
17 **the Official Statement relating to the sale of the Certificates; approving the form of the**
18 **Continuing Disclosure Certificate; granting general authority to City officials to take**
19 **necessary actions in connection with the authorization, execution, sale and delivery of**
20 **the Certificates; approving modifications to documents and agreements; declaring the**
21 **City's intent to reimburse certain expenditures; and ratifying previous actions taken in**
22 **connection therewith.**

1 WHEREAS, the Board of Supervisors (the “Board of Supervisors” or the “Board”) of the
2 City and County of San Francisco (the “City”) desires to finance the cost of the acquisition,
3 construction and installation of certain additions and improvements, to replace the maximum
4 security County jails currently located in the City’s Hall of Justice Building (the “Rehabilitation
5 Detention Facility Project”) through the execution and delivery of one or more series of
6 certificates of participation (the “Certificates”); and

7 WHEREAS, the Certificates will be executed and delivered in one or more series on a
8 tax-exempt and/or taxable basis pursuant to a trust agreement (the “Trust Agreement”)
9 between the City and the trustee to be named therein (the “Trustee”); and

10 WHEREAS, in advance of the execution and delivery of the Certificates the Board
11 desires to authorize the issuance of commercial paper notes under the City’s commercial
12 paper program to fund costs of the Rehabilitation Detention Facility Project on an interim
13 basis until the Certificates are executed and delivered to provide permanent financing on a
14 long-term basis; and

15 WHEREAS, in connection with the execution and delivery of the Certificates, the Board
16 desires to cause the execution of a Property Lease (the “Property Lease”), pursuant to which
17 the City will lease to the Trustee a portion of Lot 001, Block 4154, known as 1001 Potrero
18 Avenue, San Francisco (the “Leased Property”), and a Lease Agreement (the “Lease
19 Agreement”), pursuant to which the Trustee will lease the Leased Property back to the City;
20 and

21 WHEREAS, the Board has been presented with the form of certain documents and
22 agreements referred to herein relating to the Certificates, and the Board has examined and is
23 approving each such document and agreement and desires to authorize the execution of such
24 documents and agreements and the consummation of such financing; and

1 WHEREAS, upon the effectiveness of this Ordinance, all conditions, things and acts
2 required by law to exist, to happen and to be performed precedent to and as a condition of the
3 execution and delivery of the Property Lease, the Lease Agreement, the Trust Agreement and
4 the Certificates will exist, have happened and have been performed in due time, form and
5 manner in accordance with applicable law, and the City shall be authorized pursuant to its
6 Charter and other applicable law to execute and deliver the Property Lease, the Lease
7 Agreement, the Continuing Disclosure Certificate, the Trust Agreement and, as applicable,
8 the Purchase Contract and to cause the execution and delivery of the Certificates in the
9 manner and form provided in this Ordinance; and

10 WHEREAS, the City has paid and expects to pay certain expenditures in connection
11 with the Rehabilitation Detention Facility Project to be financed by the Certificates prior to the
12 execution and delivery of the Certificates, and the City intends to reimburse itself and to pay
13 third parties for such prior expenditures from the proceeds of the Certificates; and

14 WHEREAS, Section 1.150-2 of the Treasury Regulations promulgated under the
15 Internal Revenue Code of 1986 (the "Reimbursement Regulations") requires the City to
16 declare its reasonable official intent to reimburse prior expenditures with the proceeds of a
17 subsequent borrowing; and

18 WHEREAS, the Reimbursement Regulations require that any reimbursement allocation
19 of proceeds of the Certificates to be made with respect to expenditures incurred prior to the
20 execution and delivery of the Certificates will occur not later than eighteen (18) months after
21 the later of (i) the date on which the expenditure is paid or (ii) the date on which the facilities
22 are placed in service, but in no event later than three (3) years after the expenditure is paid;
23 and

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

4 NOW THEREFORE,

5 Be it ordained by the People of the City and County of San Francisco, as follows:

6 Section 1. Findings. The Board hereby finds and determines that the recitals set
7 forth above are true and correct.

8 Section 2. File Documents. The documents presented to the Board and on file with
9 the Clerk of the Board or her designee (collectively, the "Clerk") are contained in File No.
10 _____.

11 Section 3. Authorization of the Certificates. The Board hereby authorizes and
12 approves the execution and delivery of the Certificates in accordance with the Trust
13 Agreement. The Board hereby approves the issuance of commercial paper notes from time to
14 time to fund certain costs relating to the Rehabilitation Detention Facility Project. The
15 proceeds of the Certificates will be used to fund (i) costs of the Rehabilitation Detention
16 Facility Project, including repayment of commercial paper notes and interest thereon issued
17 for such purpose; (ii) a debt service or other similar reserve, as appropriate; (iii) capitalized
18 interest, if any; and (iv) costs of issuance of the Certificates. The Certificates shall be
19 designated as "Certificates of Participation (Rehabilitation Detention Facility Project)," with
20 such other or additional designation, including the year of execution and delivery, as
21 determined by the Director of Public Finance of the City or her designee, acting for and on
22 behalf of the City Controller (collectively, the "Director of Public Finance").

23 The Certificates shall evidence an aggregate principal amount of not to exceed Two
24 Hundred Fifteen Million Dollars (\$215,000,000), and shall evidence interest at a true interest
25 cost up to but not to exceed twelve percent (12%) per annum. The Certificates shall be

1 subject to prepayment as set forth in the Lease Agreement and Trust Agreement. The
2 Director of Public Finance is hereby authorized, to the extent such officer deems it necessary
3 or advisable and financially advantageous to the City, to procure credit enhancement for the
4 Certificates, including but not limited to municipal bond insurance or a debt service reserve
5 fund surety policy.

6 The Director of Public Finance is hereby authorized, to the extent such officer deems it
7 necessary or advisable and in the interests of the City, to cause the execution and delivery of
8 the Certificates (i) with interest with respect thereto exempt or not exempt from federal income
9 tax, and (ii) under any federal tax law provisions which provide for federal grants or credits to
10 the City or to investors in lieu of the exemption of interest from federal income tax.

11 Section 4. Approval of the Trust Agreement; Authorization of the Selection of the
12 Trustee. The form of the Trust Agreement between the City and the Trustee, as presented to
13 the Board, a copy of which is on file with the Clerk, is hereby approved. The Mayor of the City
14 or his designee (collectively, the "Mayor") or the Controller or his designee (the "Controller") is
15 hereby authorized to execute and deliver the Trust Agreement, and the Clerk is hereby
16 authorized to attest to and affix the seal of the City on the Trust Agreement, with such
17 changes, additions and modifications as the Mayor or the Controller may make or approve in
18 accordance with Section 14 hereof.

19 The Director of Public Finance is hereby authorized to select the Trustee in accordance
20 with City policies and procedures, including but not limited to the City's policy to provide
21 locally disadvantaged business enterprises an equal opportunity to participate in the
22 performance of all City contracts.

23 Section 5. Approval of the Property Lease. The form of the Property Lease between
24 the City and the Trustee, as presented to the Board, a copy of which is on file with the Clerk,
25 is hereby approved. The Mayor or the Controller is hereby authorized to execute and deliver

1 the Property Lease, and the Clerk is hereby authorized to attest to and affix the seal of the
2 City on the Property Lease, with such changes, additions and modifications as the Mayor or
3 the Controller may make or approve in accordance with Section 14 hereof.

4 Section 6. Approval of the Lease Agreement. The form of the Lease Agreement
5 between the City and the Trustee, as presented to the Board, a copy of which is on file with
6 the Clerk, is hereby approved. The Mayor or the Controller is hereby authorized to execute
7 and deliver the Lease Agreement, and the Clerk is hereby authorized to attest and to affix the
8 seal of the City on the Lease Agreement with such changes, additions and modifications as
9 the Mayor may make or approve in accordance with Section 14 hereof; provided, however,
10 that the maximum Base Rental (as defined in the Lease Agreement) to be paid under the
11 Lease Agreement in any fiscal year shall not exceed Twenty Seven Million Dollars
12 (\$27,000,000) and the initial stated term of the Lease Agreement shall not extend beyond the
13 35th year following its date of execution, as such initial term may be extended in accordance
14 with the Lease Agreement.

15 Section 7. Approval of the Leased Property and the Base Rental Payments. The
16 Board hereby approves the leasing, pursuant to the terms of the Property Lease and the
17 Lease Agreement, of all or a portion of the Leased Property. The Board also hereby approves
18 the payment by the City of the Base Rental with respect thereto.

19 Section 8. Official Statement. The form of proposed Preliminary Official Statement
20 describing the Certificates (the "Preliminary Official Statement") submitted to the Board of
21 Supervisors is approved and adopted as the Preliminary Official Statement describing the
22 Certificates, with such additions, corrections and revisions as may be determined to be
23 necessary or desirable made in accordance herewith. The Controller is authorized to cause
24 the distribution of a Preliminary Official Statement deemed final for purposes of Securities and
25 Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of

1 1934, as amended (the "Rule"), and to sign a certificate to that effect. The Director of Public
2 Finance is authorized and directed to cause to be printed and mailed or electronically
3 distributed to prospective bidders or purchasers for the Certificates the Preliminary Official
4 Statement in substantially the form of the Preliminary Official Statement approved and
5 adopted by this Ordinance, as completed, supplemented, corrected or revised. The Controller
6 is authorized and directed to approve, execute, and deliver the final Official Statement with
7 respect to the Certificates, which final Official Statement shall be in the form of the Preliminary
8 Official Statement, with such additions, corrections and revisions as may be determined to be
9 necessary or desirable made in accordance herewith and as are permitted under the Rule.
10 The Director of Public Finance is authorized and directed to cause to be printed and mailed or
11 electronically distributed the final Official Statement to all actual initial purchasers of the
12 Certificates.

13 Section 9. Continuing Disclosure Certificate. The form of Continuing Disclosure
14 Certificate (the "Continuing Disclosure Certificate"), to be signed by the Controller to permit
15 the original purchasers of the Certificates to comply with the Rule, submitted to the Board is
16 approved and adopted as the Continuing Disclosure Certificate, with such additions,
17 corrections and revisions as may be determined to be necessary or desirable made in
18 accordance herewith. The Controller is authorized and directed to execute the Continuing
19 Disclosure Certificate on behalf of the City and deliver the Continuing Disclosure Certificate to
20 the original purchasers of the Certificates.

21 Section 10. Sale of the Certificates. The Controller or the Director of Public Finance
22 is hereby authorized to cause the sale of the Certificates by competitive or negotiated sale. If
23 sold by competitive sale, the Controller or the Director of Public Finance is hereby authorized
24 and directed to award the Certificates to the bidder whose bid represents the lowest true
25

1 interest cost to the City (as confirmed by the City's financial advisor) and whose bid otherwise
2 conforms to the bid requirements contained in the Official Notice of Sale.

3 The form of proposed Notice of Intention to Sell the Certificates (the "Notice of Intention
4 to Sell Certificates") submitted to the Board is approved and adopted as the Notice of
5 Intention to Sell the Certificates, and the Controller or the Director of Public Finance is
6 authorized and directed to cause the Notice of Intention to Sell Certificates, subject to such
7 corrections, revisions or additions as may be made in accordance herewith, to be published
8 once in *The Bond Buyer* or another financial publication generally circulated throughout the
9 State of California.

10 If the Controller or the Director of Public Finance determines to sell the Certificates by
11 negotiated sale, the Controller or the Director of Public Finance is hereby authorized to sell
12 the Certificates by negotiated sale pursuant to one or more purchase contracts (each, a
13 "Purchase Contract") by and between the City and the underwriters named therein; provided,
14 however, that the underwriters' discount under any such Purchase Contract shall not exceed
15 one percent (1.0%) of the principal amount of the Certificates.

16 To accomplish the sale of the Certificates by negotiated sale, if applicable, the
17 Controller or the Director of Public Finance is hereby authorized to appoint one or more
18 financial institutions to act as underwriter for the Certificates in accordance with City policies
19 and procedures, including but not limited to the City's policy to provide locally disadvantaged
20 business enterprises an equal opportunity to participate in the performance of all City
21 contracts.

22 Section 11. Reimbursement. The City declares its official intent to reimburse prior
23 expenditures of the City incurred prior to the execution and delivery of the Certificates in
24 connection with the Rehabilitation Detention Facility Project or portions thereof with the
25 proceeds of the Certificates. The Board of Supervisors declares the City's intent to reimburse

1 the City with the proceeds of the Certificates for the expenditures with respect to the
2 Rehabilitation Detention Facility Project (the “Expenditures” and each an “Expenditure”) made
3 on and after that date that is no more than 60 days prior to adoption of this Ordinance. The
4 City reasonably expects on the date of adoption of this Ordinance that it will reimburse the
5 Expenditures with the proceeds of the Certificates.

6 Each Expenditure was and will be either (a) of a type properly chargeable to a capital
7 account under general federal income tax principles (determined in each case as of the date
8 of the Expenditure), (b) a cost of issuance with respect to the Certificates, (c) a nonrecurring
9 item that is not customarily payable from current revenues, or (d) a grant to a party that is not
10 related to or an agent of the City so long as such grant does not impose any obligation or
11 condition (directly or indirectly) to repay any amount to or for the benefit of the City. The
12 maximum aggregate principal amount of the Certificates expected to be executed and
13 delivered for the Rehabilitation Detention Facility Project is \$215,000,000. The City shall
14 make a reimbursement allocation, which is a written allocation by the City that evidences the
15 City’s use of proceeds of the Certificates to reimburse an Expenditure, no later than 18
16 months after the later of the date on which the Expenditure is paid or the Rehabilitation
17 Detention Facility Project is placed in service or abandoned, but in no event more than three
18 years after the date on which the Expenditure is paid. The City recognizes that exceptions
19 are available for certain “preliminary expenditures,” costs of issuance, certain *de minimis*
20 amounts, expenditures by “small issuers” (based on the year of issuance and not the year of
21 expenditure) and expenditures for construction projects of at least 5 years.

22 Section 12. General Authority. The Mayor, the City Treasurer, the City Attorney, the
23 City Controller, the City Administrator, the Director of Public Finance, the Clerk and other
24 officers of the City and their duly authorized deputies, designees and agents are hereby
25 authorized and directed, jointly and severally, to take such actions and to execute and deliver

1 such certificates, agreements, requests or other documents as they may deem necessary or
2 desirable to accomplish the purposes of this Ordinance, including but not limited to the
3 execution and delivery of the Property Lease, the Lease Agreement, the Trust Agreement, the
4 Continuing Disclosure Certificate, the Purchase Contract and the Certificates, to obtain bond
5 insurance or other credit enhancements or a surety policy with respect to the Certificates, to
6 obtain title insurance, to clear any encumbrances to title and to carry out other title work. Any
7 such actions are solely intended to further the purposes of this Ordinance, and are subject in
8 all respects to the terms of this Ordinance. No such actions shall increase the risk to the City
9 or require the City to spend any resources not otherwise granted herein. Final versions of any
10 such documents shall be provided to the Clerk of the Board of Supervisors for inclusion in the
11 official file within 30 days of execution (or as soon thereafter as final documents are available)
12 by all parties.

13 Section 13. Modifications, Changes and Additions. The Mayor, the City Treasurer,
14 the City Controller and the Director of Public Finance each are hereby authorized to make
15 such modifications, changes and additions to the documents and agreements approved
16 hereby, upon consultation with the City Attorney, as may be necessary or desirable and in the
17 interests of the City, and which changes do not materially increase the City's obligations or
18 reduce its rights thereunder or hereunder. The respective official's approval of such
19 modifications, changes and additions shall be conclusively evidenced by the execution and
20 delivery thereof by such official.

21 Section 14. Partial Invalidity. Any provision of this Ordinance found to be prohibited
22 by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the
23 remainder of this Ordinance.

24 Section 15. Effective Date. This Ordinance shall take effect immediately.

25

1 Section 16. Ratification of Prior Actions. All actions authorized consistent with any
2 documents presented herein and approved by this Ordinance but heretofore taken are hereby
3 ratified, approved and confirmed by the Board.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 Mark D. Blake
9 Deputy City Attorney
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