

1 [Ordinance Authorizing Certificates of Participation - 1500 Mission Project - Not to Exceed
2 \$321,765,000]

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 \$321,765,000 to fund a portion of the development costs,**
6 **including construction and improvement, and related FF&E (furniture, fixture, or other**
7 **equipment), technology, and moving costs for the 1500 Mission office building;**
8 **authorizing the issuance of commercial paper notes in advance of the delivery of the**
9 **Certificates; approving the form of Trust Agreement between the City and County of**
10 **San Francisco and the Trustee (including certain indemnities contained therein);**
11 **authorizing the selection of the Trustee by the Director of Public Finance; approving**
12 **respective forms of a Property Lease and a Lease Agreement, each between the City**
13 **and the Trustee for the lease and lease back of certain property and facilities of the**
14 **City; approving the forms of Purchase Contract, Official Notice of Sale, and Notice of**
15 **Intention to Sell Certificates; directing the publication of the Notice of Intention to Sell**
16 **Certificates; approving the form of the Preliminary Official Statement and the form and**
17 **execution of the Official Statement relating to the sale of the Certificates; approving the**
18 **form of the Continuing Disclosure Certificate; granting general authority to City**
19 **officials to take necessary actions in connection with the authorization, execution, sale**
20 **and delivery of the Certificates; approving modifications to documents and**
21 **agreements; declaring the City's intent to reimburse certain expenditures; and ratifying**
22 **previous actions taken in connection therewith.**

23 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
24 **Additions to Codes** are in *single-underline italics Times New Roman font*.
25 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

WHEREAS, the Board of Supervisors (the “Board of Supervisors” or the “Board”) of the City and County of San Francisco (the “City”) desires to fund a portion of the development costs, including construction and improvement, and related FF&E (furniture, fixture, or other equipment), technology, and moving costs for the 1500 Mission office building (the “Project”) through the execution and delivery of one or more series of certificates of participation (the “Certificates”); and

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

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

WHEREAS, In connection with the execution and delivery of the Certificates, the Board desires to cause the execution of a Property Lease (the “Property Lease”), pursuant to which the City will lease to the Trustee the property located at 1500 Mission Street, and/or other property designated by the Director of Public Finance (the “Leased Property”), and a Lease Agreement (the “Lease Agreement”), pursuant to which the Trustee will lease the Leased Property back to the City; and

WHEREAS, The Board has been presented with the form of certain documents and agreements referred to herein relating to the Certificates, and the Board has examined and is approving each such document and agreement and desires to authorize the execution of such 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, if applicable, the
8 Purchase Contract, and to cause the execution and delivery of the Certificates in the manner
9 and form provided in this Ordinance; and

10 WHEREAS, The City has paid and expects to pay certain expenditures in connection
11 with the Project to be financed by the Certificates prior to the execution and delivery of the
12 Certificates, and the City intends to reimburse itself and to pay third parties for such prior
13 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
19 allocation of proceeds of the Certificates to be made with respect to expenditures incurred
20 prior to the execution and delivery of the Certificates will occur not later than eighteen (18)
21 months after the later of (i) the date on which the expenditure is paid or (ii) the date on which
22 the facilities are placed in service, but in no event later than three (3) years after the
23 expenditure is paid;

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, Be it ordained by the People of the City and County of San
5 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 Project. The proceeds of the Certificates will be used
15 to fund (i) costs of the Project, including repayment of commercial paper notes and interest
16 thereon issued for such purpose; (ii) a debt service or other similar reserve, as appropriate;
17 (iii) capitalized interest, if any; and (iv) costs of the execution and delivery of the Certificates.
18 The Certificates shall be designated as "Certificates of Participation (1500 Mission Project),"
19 with such other or additional designation, including the year of execution and delivery, as
20 determined by the Director of Public Finance of the City or her designee, acting for and on
21 behalf of the City Controller (collectively, the "Director of Public Finance").

22 The Certificates shall evidence an aggregate principal amount of not to exceed Three
23 Hundred Twenty One Million Seven Hundred Sixty Five Thousand Dollars (\$321,765,000),
24 and shall evidence interest at a true interest cost up to but not to exceed twelve percent (12%)
25 per annum. The Certificates shall be subject to prepayment as set forth in the Lease

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

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

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

18 The Director of Public Finance is hereby authorized to select the Trustee in accordance
19 with City policies and procedures.

20 Section 5. Approval of the Property Lease. The form of the Property Lease between
21 the City and the Trustee, as presented to the Board, a copy of which is on file with the Clerk,
22 is hereby approved. The Mayor or the Controller is hereby authorized to execute and deliver
23 the Property Lease, and the Clerk is hereby authorized to attest to and affix the seal of the
24 City on the Property Lease, with such changes, additions and modifications as made or
25 approved in accordance with Section 13 hereof.

1 Section 6. Approval of the Lease Agreement. The form of the Lease Agreement
2 between the City and the Trustee, as presented to the Board, a copy of which is on file with
3 the Clerk, is hereby approved. The Mayor or the Controller is hereby authorized to execute
4 and deliver the Lease Agreement, and the Clerk is hereby authorized to attest and to affix the
5 seal of the City on the Lease Agreement with such changes, additions and modifications as
6 made or approved in accordance with Section 13 hereof; provided, however, that the
7 maximum Base Rental (as defined in the Lease Agreement) to be paid under the Lease
8 Agreement in any fiscal year shall not exceed Twenty Four Million Dollars (\$24,000,000) and
9 the initial stated term of the Lease Agreement shall not extend beyond the 35th year following
10 its date of execution, as such initial term may be extended in accordance with the Lease
11 Agreement.

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

16 Section 8. Official Statement. The form of proposed Preliminary Official Statement
17 describing the Certificates (the "Preliminary Official Statement") submitted to the Board of
18 Supervisors is approved and adopted as the Preliminary Official Statement describing the
19 Certificates, with such additions, corrections and revisions as may be determined to be
20 necessary or desirable made in accordance herewith. The Controller is authorized to cause
21 the distribution of a Preliminary Official Statement deemed final for purposes of Securities and
22 Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of
23 1934, as amended (the "Rule"), and to sign a certificate to that effect. The Director of Public
24 Finance is authorized and directed to cause to be printed and mailed or electronically
25 distributed to prospective bidders or purchasers for the Certificates the Preliminary Official

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

10 Section 9. Continuing Disclosure Certificate. The form of Continuing Disclosure
11 Certificate (the "Continuing Disclosure Certificate"), to be signed by the Controller to permit
12 the original purchasers of the Certificates to comply with the Rule, submitted to the Board is
13 approved and adopted as the Continuing Disclosure Certificate, with such changes, additions
14 and modifications as made or approved in accordance with Section 13 hereof. The Controller
15 is authorized and directed to execute the Continuing Disclosure Certificate on behalf of the
16 City and deliver the Continuing Disclosure Certificate to the original purchasers of the
17 Certificates.

18 Section 10. Sale of the Certificates. The Controller or the Director of Public Finance
19 is hereby authorized to cause the sale of the Certificates by competitive or negotiated sale. If
20 sold by competitive sale, the Controller or the Director of Public Finance is hereby authorized
21 and directed to award the Certificates to the bidder whose bid represents the lowest true
22 interest cost to the City (as confirmed by the City's municipal advisor) and whose bid
23 otherwise conforms to the bid requirements contained in the Official Notice of Sale.

24 The form of proposed Notice of Intention to Sell the Certificates (the "Notice of Intention
25 to Sell Certificates") submitted to the Board is approved and adopted as the Notice of

1 Intention to Sell the Certificates, and the Controller or the Director of Public Finance is
2 authorized and directed to cause the Notice of Intention to Sell Certificates, subject to such
3 changes, additions and modifications as made or approved in accordance with Section 13
4 hereof, to be published once in *The Bond Buyer* or another financial publication generally
5 circulated throughout the State of California.

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

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

18 Section 11. Reimbursement. The City declares its official intent to reimburse prior
19 expenditures of the City incurred prior to the execution and delivery of the Certificates in
20 connection with the Project or portions thereof with the proceeds of the Certificates. The
21 Board of Supervisors declares the City’s intent to reimburse the City with the proceeds of the
22 Certificates for the expenditures with respect to the Project (the “Expenditures” and each an
23 “Expenditure”) made on and after that date that is no more than 60 days prior to adoption of
24 this Ordinance. The City reasonably expects on the date of adoption of this Ordinance that it
25 will reimburse the Expenditures with the proceeds of the Certificates.

1 Each Expenditure was and will be either (a) of a type properly chargeable to a capital
2 account under general federal income tax principles (determined in each case as of the date
3 of the Expenditure), (b) a cost of issuance with respect to the Certificates, (c) a nonrecurring
4 item that is not customarily payable from current revenues, or (d) a grant to a party that is not
5 related to or an agent of the City so long as such grant does not impose any obligation or
6 condition (directly or indirectly) to repay any amount to or for the benefit of the City. The
7 maximum aggregate principal amount of the Certificates expected to be executed and
8 delivered for the Project is \$321,765,000. The City shall make a reimbursement allocation,
9 which is a written allocation by the City that evidences the City's use of proceeds of the
10 Certificates to reimburse an Expenditure, no later than 18 months after the later of the date on
11 which the Expenditure is paid or the Project is placed in service or abandoned, but in no event
12 more than three years after the date on which the Expenditure is paid. The City recognizes
13 that exceptions are available for certain "preliminary expenditures," costs of issuance, certain
14 *de minimis* amounts, expenditures by "small issuers" (based on the year of issuance and not
15 the year of expenditure) and expenditures for construction projects of at least 5 years.

16 Section 12. General Authority. The Mayor, the City Treasurer, the City Controller, the
17 City Attorney, the City Administrator, the Director of Public Finance, the Clerk and other
18 officers of the City and their duly authorized deputies, designees and agents are hereby
19 authorized and directed, jointly and severally, to take such actions and to execute and deliver
20 such certificates, agreements, requests or other documents as they may deem necessary or
21 desirable to accomplish the purposes of this Ordinance, including but not limited to the
22 execution and delivery of the Property Lease, the Lease Agreement, the Trust Agreement, the
23 Continuing Disclosure Certificate, the Purchase Contract and the Certificates, to obtain bond
24 insurance and/or other credit enhancements and/or a surety policy with respect to the
25 Certificates, to obtain title insurance, to clear any encumbrances to title and to carry out other

1 title work. Any such actions are solely intended to further the purposes of this Ordinance, and
2 are subject in all respects to the terms of this Ordinance. No such actions shall increase the
3 risk to the City or require the City to spend any resources not otherwise granted herein. Final
4 versions of any such documents shall be provided to the Clerk of the Board of Supervisors for
5 inclusion in the official file within 30 days of execution (or as soon thereafter as final
6 documents are available) by all parties.

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

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

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

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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.

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

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