

[Certificates of Participation - War Memorial Veterans Building Seismic Upgrade and Improvements - Not to Exceed \$170,000,000]

Ordinance authorizing the execution and delivery of certificates of participation evidencing in an aggregate principal amount of not to exceed \$170,000,000 to: 1) finance the seismic upgrade of and certain improvements to the War Memorial Veterans Building; 2) authorizing the selection of a trustee by the Director of Public Finance and approving the form of a trust agreement for the certificates of participation between the City and County of San Francisco and the trustee named therein (including certain indemnities contained therein); 3) approving the forms of a property lease and a project lease between the City and the trustee of one or more portions of the San Francisco War Memorial Performing Arts Center; 4) approving the form of an official notice of sale and notice of intention to sell for the certificates of participation, if sold by competitive sale; 5) authorizing the selection of underwriters by the Director of Public Finance and approving the form of a purchase contract between the City and the underwriters relating to the certificates of participation, if sold by negotiated sale; 6) approving the forms of a preliminary and final official statement with respect to the certificates of participation; 7) approving the form of a continuing disclosure certificate; 8) finding that the proposed project is categorically exempt from the California Environmental Quality Act; 9) finding that the proposed project is in conformity with the priority policies of Planning Code Section 101.1(b) and with the General Plan consistency requirements of Charter Section 4.105 and Administrative Code Section 2A.53; 10) granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of the certificates of participation; 11) approving modifications to documents and agreements; and 12) ratifying previous actions taken in connection therewith.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

1 WHEREAS, the Board of Supervisors of the City and County of San Francisco (the “Board of
2 Supervisors” or the “Board”) desires to finance the construction and installation of certain improvements in
3 connection with the renovation of the San Francisco War Memorial Veterans Building (the “Project”); and

4 WHEREAS, the Board desires to initially finance renovation activities for the Project through the
5 issuance of commercial paper under the City’s commercial paper program and to apply proceeds of certificates
6 of participation authorized hereby (the “Certificates”) to, in part, repay such commercial paper, and interest
7 thereon; and

8 WHEREAS, the Board desires to cause the execution and delivery of one or more series of the
9 Certificates to finance the Project pursuant to a trust agreement (the “Trust Agreement”), between the City and
10 the trustee named therein (the “Trustee”); and

11 WHEREAS, in connection with the execution and delivery of the Certificates, the Board desires
12 to cause the execution of a Property Lease (the “Property Lease”), pursuant to which the City will lease to the
13 Trustee one or more portions of the San Francisco War Memorial Performing Arts Center (the “Leased Property”)
14 located on the real property (the “Site”) at 301 and 401 Van Ness Avenue, respectively, and a Project Lease (the
15 “Project Lease”), pursuant to which the Trustee will lease the Leased Property back to the City; and

16 WHEREAS, this Board has been presented with the form of certain documents and agreements
17 referred to herein relating to the Certificates, and the Board has examined and is approving each such document
18 and agreement and desires to authorize and direct the execution of such documents and agreements and the
19 consummation of such financing; and

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

23 WHEREAS, the Certificates may be sold by competitive sale pursuant to an official notice of sale
24 and a notice of intention to sell or by negotiated sale; and

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Mayor Lee, Supervisor Chiu
BOARD OF SUPERVISORS

1 WHEREAS, the War Memorial Board of Trustees is the governing body of the War Memorial and
2 Performing Arts Center, which consists of four City-owned buildings: the War Memorial Veterans Building, the
3 War Memorial Opera House, Louise M. Davies Symphony Hall, and Zellerbach Rehearsal Hall (collectively, the
4 “War Memorial”); and

5 WHEREAS, the War Memorial is a charitable trust department under Article V of the City Charter
6 and as such, the War Memorial Board of Trustees has exclusive charge of the trusts and all other assets under
7 its jurisdiction, which may be acquired by loan, purchase, gift, devise, bequest or otherwise, including any land or
8 buildings set aside for their use; and

9 WHEREAS, the War Memorial Board of Trustees has authority to maintain, operate, manage,
10 repair or reconstruct existing buildings and construct new buildings, and to make and enter into contracts relating
11 thereto; and

12 WHEREAS, the execution and delivery of the Certificates and the pledge of the Leased Property
13 were approved by the War Memorial Board of Trustees by its Resolution No. 11-26 on June 9, 2011, and

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

15 Section 1. Recitals. All of the recitals herein are true and correct.

16 Section 2. Conditions Precedent. All conditions, things and acts required by law to exist, to
17 happen and to be performed precedent to and in the execution and delivery of Property Lease, the Project Lease
18 and the Certificates exist, have happened and have been performed in due time, form and manner in
19 accordance with applicable law, and the City is now authorized pursuant to its Charter and applicable law to
20 execute and deliver the Property Lease and the Project Lease and to issue and cause the issuance of the
21 Certificates in the manner and form provided in this Ordinance.

22 Section 3. File Documents. The documents presented to this Board and on file with the Clerk of
23 the Board or her designee (collectively, the “Clerk”) are contained in File No. _____.

24 Section 4. Authorization of the Certificates; Credit Enhancement. The Board hereby authorizes
25 and approves the execution and delivery of the Certificates, which shall be executed and delivered in

1 accordance with the Project Lease and the Trust Agreement, as the same are finally executed and delivered.
2 The proceeds of the Certificates will be used to (i) fund the Project, including repayment of commercial paper or
3 other interim financing issued by the City for such purpose, including interest thereon; (ii) fund a reserve fund,
4 reserve surety or other reserve fund instrument, as appropriate; (iii) fund any capitalized interest; and (iv) pay
5 costs of issuance of the Certificates. The Certificates shall be designated as "Certificates of Participation (War
6 Memorial Veterans Building Seismic Upgrade and Improvements)," or with such other designation, including the
7 year of execution and delivery, as deemed appropriate by the Director of Public Finance of the City or her
8 designee (collectively, the "Director of Public Finance").

9 The Certificates shall evidence an aggregate principal amount not to exceed One Hundred
10 Seventy Million Dollars (\$170,000,000), and shall evidence interest at true interest cost of not to exceed twelve
11 percent (12%) per annum. The Certificates shall be subject to prepayment as set forth in the Project Lease and
12 Trust Agreement. This Board authorizes the Director of Public Finance, to the extent such officer deems it
13 necessary or advisable and in the interests of the City, to procure credit enhancement for the Certificates,
14 including, but not limited to, municipal bond insurance or a debt service reserve fund surety bond or other
15 reserve fund instrument.

16 The Board hereby authorizes the Director of Public Finance, to the extent such officer deems it
17 necessary or advisable and in the interests of the City, to cause the execution and delivery of the Certificates (i)
18 with tax-exempt or taxable rates or (ii) under federal tax law provisions, if any, which provide for federal grants or
19 credits to or for the benefit of the City in lieu of tax-exemption of interest or (iii) as "qualified private activity
20 bonds" and to publish any notices and conduct any public hearings in connection therewith.

21 Section 5. Approval of the Trust Agreement; Authorization of Selection of Trustee. The form of
22 the Trust Agreement between the City and the Trustee, as presented to this Board, a copy of which is on file with
23 the Clerk, is hereby approved. The Mayor of the City or his designee (collectively, the "Mayor") is hereby
24 authorized to execute the Trust Agreement, and the Clerk, is hereby authorized to attest to and affix the seal of
25

1 the City on the Trust Agreement, with such changes, additions and modifications as the Mayor may make or
2 approve in accordance with Section 18 hereof.

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

6 Section 6. Approval of the Property Lease. The form of the Property Lease between the City
7 and the Trustee, as presented to this Board, a copy of which is on file with the Clerk, is hereby approved. The
8 Mayor is hereby authorized to execute the Property Lease, and the Clerk, is hereby authorized to attest to and
9 affix the seal of the City on the Property Lease, with such changes, additions and modifications as the Mayor
10 may make or approve in accordance with Section 18 hereof.

11 Section 7. Approval of the Project Lease; Approval of Base Rental. The form of the Project
12 Lease between the City and the Trustee, as presented to this Board, a copy of which is on file with the Clerk, is
13 hereby approved. The Mayor is hereby authorized to execute the Project Lease, and the Clerk is hereby
14 authorized to attest and to affix the seal of the City on the Project Lease with such changes, additions and
15 modifications as the Mayor may make or approve in accordance with Section 18 hereof; provided, however, that
16 the maximum Base Rental (as defined in the Project Lease) scheduled to be paid under the Project Lease in any
17 fiscal year shall not exceed Eighteen Million Five Hundred Thousand Dollars (\$18,500,000) and the stated term
18 of the Project Lease shall not have an initial term that extends beyond the 35th year following its date of
19 execution, as such initial term may be extended in accordance with the Project Lease.

20 Section 8. Approval of the Leased Property. The Board hereby approves of the leasing,
21 pursuant to the Property Lease and the Project Lease, of all or a portion of the following Leased Property: (i) the
22 War Memorial Veterans Building located at 401 Van Ness Avenue in the City, and (ii) the War Memorial Opera
23 House located at 301 Van Ness Avenue in the City. The Board also hereby approves the payment by the City of
24 the Base Rental with respect thereto.

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Mayor Lee, Supervisor Chiu
BOARD OF SUPERVISORS

1 Section 9. Sale and Award of Certificates by Competitive Sale. In the event the Director of Public
2 Finance determines to sell the Certificates by competitive sale, the Director of Public Finance, on behalf of the
3 Controller, is hereby authorized to receive bids for the purchase of the Certificates, and the Controller is hereby
4 authorized and directed to award the Certificates to the bidder whose bid represents the lowest true interest cost
5 to the City, all in accordance with the procedures described in the Official Notice of Sale (as defined below).

6 Section 10. Approval of Form of Official Notice of Sale. The form of an official notice of sale
7 relating to the Certificates (the "Official Notice of Sale"), as presented to this Board, a copy of which is on file with
8 the Clerk, is hereby approved. The Director of Public Finance is hereby authorized to approve the distribution of
9 an Official Notice of Sale for the Certificates, with such changes, additions and modifications as the Director of
10 Public Finance may make or approve upon consultation with the City Attorney.

11 Section 11. Approval of Notice of Intention to Sell relating to the Certificates. The form of a
12 notice of intention to sell relating to the Certificates (the "Notice of Intention to Sell"), as presented to this Board,
13 a copy of which is on file with the Clerk, is hereby approved. The Director of Public Finance is hereby authorized
14 to approve the publication of the Notice of Intention to Sell relating to the Certificates, with such changes,
15 additions and modifications as the Director of Public Finance may make or approve upon consultation with the
16 City Attorney.

17 Section 12. Sale of Certificates by Negotiated Sale; Approval of Purchase Contract; Selection of
18 Underwriters. In the event the Director of Public Finance determines to sell the Certificates by negotiated sale,
19 the Director of Public Finance is hereby authorized to sell the Certificates by negotiated sale pursuant to one or
20 more purchase contracts (each, a "Purchase Contract") by and between the City and the underwriter named
21 therein. The form of such Purchase Contract as presented to this Board, a copy of which is on file with the Clerk,
22 is hereby approved. The Controller is hereby authorized to execute the Purchase Contract with such charges,
23 additions and modifications as the Controller may make or approve in accordance with Section 18 hereof;
24 provided, however, that the underwriters' discount under any such Purchase Contract shall not exceed one
25 percent (1%) of the principal amount of the Certificates.

1 In order to accomplish the sale of the Certificates by negotiated sale, the Director of Public
2 Finance is hereby authorized to appoint one or more financial institutions to act as underwriter for the Certificates
3 in accordance with City policies and procedures, including but not limited to the City's policy to provide locally
4 disadvantaged business enterprises an equal opportunity to participate in the performance of all City contracts.

5 Section 13. Approval of the Official Statement in Preliminary and Final Form. The form of an
6 official statement relating to the Certificates (the "Official Statement"), as presented to this Board, a copy of which
7 is on file with the Clerk, is hereby approved. The Director of Public Finance is hereby authorized to prepare and
8 cause the preparation of the Preliminary and final Official Statements, for distribution to prospective investors, in
9 substantially said form, with such changes, additions and modifications as the Director of Public Finance may
10 make or approve upon consultation with the City Attorney and the City's Disclosure Counsel, such that the
11 Preliminary and final Official Statements are accurate and complete in all material respects for the purposes for
12 which they are provided. The Director of Public Finance is hereby authorized to cause to be printed and mailed,
13 and distributed electronically, to prospective purchasers, copies of the Preliminary Official Statement and the
14 final Official Statement.

15 The Controller of the City or his designee (the "Controller") is hereby authorized to cause the
16 distribution of the Preliminary Official Statement, deemed final for purposes of Rule 15c2-12 of the Securities and
17 Exchange Act of 1934, as amended, and to sign a certificate to that effect. The Controller is hereby further
18 authorized to sign the Official Statement in final form.

19 Section 14. Approval of the Continuing Disclosure Certificate. The form of a Continuing
20 Disclosure Certificate of the City, as presented to this Board, a copy of which is on file with the Clerk, is hereby
21 approved. The Controller is hereby authorized to execute the Continuing Disclosure Certificate, with such
22 changes, additions and modifications as the Controller may make or approve upon consultation with the City
23 Attorney.

24 Section 15. CEQA. The Board, having reviewed the proposed legislation, finds and declares for
25 the reasons set forth in the documentation from the City Planning Department on file with the Clerk of the Board

1 in File No. _____ and incorporated by reference, that the Project is categorically exempt from the
2 California Environmental Quality Act.

3 Section 16. General Plan. The Board finds and declares that the Project is (i) in conformity with
4 the priority policies of Section 101.1(b) of the City Planning Code, (ii) in accordance with Section 4.105 of the
5 San Francisco Charter and Section 2A.53(f) of the City Administrative Code, and (iii) consistent with the City's
6 General Plan, and hereby adopts the findings of the City Planning Department, as set forth in the General Plan
7 Referral Report, dated June __, 2011, and incorporates said findings by reference.

8 Section 17. General Authority. The Mayor, the City Attorney, the Controller, the City
9 Administrator, the Director of Public Finance, the Clerk and other officers of the City and their duly authorized
10 deputies, designees and agents are hereby authorized and directed, jointly and severally, to take such actions
11 and to execute and deliver such certificates, agreements, requests or other documents as they may deem
12 necessary or desirable to accomplish the purposes of this Ordinance, including but not limited to the execution
13 and delivery of the Certificates, the Trust Agreement, the Property Lease, the Project Lease, the Purchase
14 Contract, to obtain bond insurance or other credit enhancements with respect to the Certificates, to obtain title
15 insurance, to clear any encumbrances to title, to survey property and to carry out other title work.

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

23 Section 19. Ratification of Prior Actions. All actions authorized and approved by this Ordinance
24 but heretofore taken are hereby ratified, approved and confirmed by this Board.

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Mayor Lee, Supervisor Chiu
BOARD OF SUPERVISORS

1 APPROVED AS TO FORM:

2 DENNIS J. HERRERA, City Attorney

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4 By: _____
5 KENNETH DAVID ROUX
6 Deputy City Attorney

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