AMENDED IN COMMITTEE
FILE NO. 240723 7/31/2024 ORDINANCE NO. 217-24

[Authorizing Certificates of Participation - Concourse Garage Project - Not to Exceed $29,000,000]

**Ordinance authorizing the execution and delivery of Certificates of Participation on a tax-exempt or taxable basis evidencing and representing an aggregate principal amount of not to exceed $29,000,000 to fund all or a portion of the acquisition of the Concourse Garage; authorizing the issuance of commercial paper notes in advance of the delivery of the Certificates; approving the form of Trust Agreement between the City and County of San Francisco and the Trustee (including certain indemnities contained therein); authorizing the selection of the Trustee by the Director of Public Finance; approving respective forms of a Property Lease and a Lease Agreement, each between the City and County of San Francisco and the Trustee for the lease and lease back of certain property and facilities of the City; approving the forms of Purchase Contract, Official Notice of Sale, and Notice of Intention to Sell Certificates; directing the publication of the Notice of Intention to Sell Certificates; approving the form of the Preliminary Official Statement and the form and execution of the Official Statement relating to the sale of the Certificates; approving the form of the Continuing Disclosure Certificate; granting general authority to City officials to take necessary actions in connection with the authorization, execution, sale and delivery of the Certificates, including termination of the Ground Lease and transfer of the Concourse Garage property and related property to the City and County of San Francisco under the jurisdiction of the Recreation and Park Commission; approving modifications to documents and agreements; declaring the City's intent to reimburse certain expenditures; and ratifying previous actions taken in connection therewith, as defined herein.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.

**Additions to Codes** are in *single-underline italics Times New Roman font*.
**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.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The City and County of San Francisco ("City"), acting by and through the Golden Gate Park Concourse Authority ("Authority") and the Recreation and Park Commission ("Commission"), leased certain City property under a Ground Lease, dated as of February 27, 2004 (as amended, the "Ground Lease"), to the Music Concourse Community Partnership ("MCCP").

(a) The property leased under the Ground Lease has been developed into the underground parking facility ("Concourse Garage") contemplated by the Golden Gate Park Revitalization Act of 1998 (adopted as Proposition J on June 2, 1998, at an election of the voters of the City) ("Proposition J"); and

(b) Proposition J was amended by an ordinance known as Proposition N ("Proposition N") approved by the City's voters at an election held on November 8, 2022, to permit the City to acquire the Concourse Garage and place the Concourse Garage under the jurisdiction of the Commission.

(c) The Board of Supervisors ("Board") of the City desires to fund all or a portion of the costs to acquire the Concourse Garage and related property ("Project") through the execution and delivery of one or more series of certificates of participation ("Certificates").

(d) 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 ("Trust Agreement") between the City and the trustee to be named therein ("Trustee").

(e) 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 (established by the Board through the adoption of resolutions 85-09 and 136-10, as amended to date) to fund costs of the Project on an interim basis until the Certificates are executed and delivered to provide permanent financing for the acquisition costs of the Concourse Garage and related property.

(f) In connection with the execution and delivery of the Certificates, the Board desires to cause the execution of a Property Lease ("Property Lease"), pursuant to which the City will lease to the Trustee the Concourse Garage property, and/or other property designated by the Director of Public Finance ("Leased Property"), and a Lease Agreement ("Lease Agreement"), pursuant to which the Trustee will lease the Leased Property back to the City.

(g) 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.

(h) Upon the effectiveness of this Ordinance, all conditions, things and acts required by law to exist, to happen and to be performed precedent to and as a condition of the execution and delivery of the Property Lease, the Lease Agreement, the Trust Agreement and the Certificates will exist, have happened and have been performed in due time, form and manner in accordance with applicable law, and the City shall be authorized pursuant to its Charter and other applicable law to execute and deliver the Property Lease, the Lease Agreement, the Continuing Disclosure Certificate, the Trust Agreement and, if applicable, the Purchase Contract, and to cause the execution and delivery of the Certificates in the manner and form provided in this Ordinance.

(i) The City has paid and expects to pay certain expenditures in connection with the Project to be financed by the Certificates prior to the execution and delivery of the Certificates, and the City intends to reimburse itself and to pay third parties for such prior expenditures from the proceeds of the Certificates.

(j) Section 1.150-2 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986 ("Reimbursement Regulations") requires the City to declare its reasonable official intent to reimburse prior expenditures with the proceeds of a subsequent borrowing.

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

(l) The adoption of this Ordinance shall constitute authorization of the Certificates within the meaning of Section 864 of the California Code of Civil Procedure and any Validation Act that is effective after this Ordinance takes effect.

Section 2. Findings. The Board hereby finds and determines that the recitals set forth above are true and correct.

Section 3. File Documents. The documents presented to the Board and on file with the Clerk of the Board or their designee (collectively, the "Clerk") are contained in File No. 240723.

Section 4. Authorization of the Certificates. The Board hereby authorizes and approves the execution and delivery of the Certificates in accordance with the Trust Agreement. The Board hereby approves the issuance of commercial paper notes from time to time to fund certain costs relating to the Project. The proceeds of the Certificates will be used

to fund (i) costs of the Project, including not more than $500,000 of Certificate proceeds to discharge certain loans owed by MCCP to the California Academy of Sciences and the de Young Museum and the repayment of commercial paper notes and interest thereon issued for such purpose; (ii) a debt service or other similar reserve, as appropriate; (iii) capitalized interest, if any; and (iv) costs of the execution and delivery of the Certificates. The Certificates shall be designated as "Certificates of Participation (Concourse Garage Project)," with such other or additional designation, including the year of execution and delivery, as determined by the Director of Public Finance of the City or their designee, acting for and on behalf of the City Controller (collectively, the "Director of Public Finance").

The Certificates shall evidence an aggregate principal amount of not to exceed Twenty-Nine Million Dollars ($29,000,000), and shall evidence interest at a true interest cost up to but not to exceed twelve percent (12%) per annum. The Certificates shall be subject to prepayment as set forth in the Lease Agreement and Trust Agreement. The Director of Public Finance is hereby authorized, to the extent such officer deems it necessary or advisable and financially advantageous to the City, to procure credit enhancement for the Certificates, including but not limited to municipal bond insurance and/or a debt service reserve fund surety policy.

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

Section 5. Approval of the Trust Agreement; Authorization of the Selection of the Trustee. The form of the Trust Agreement between the City and the Trustee, as presented to the Board, a copy of which is on file with the Clerk, is hereby approved. The Mayor of the City

or their designee (collectively, the "Mayor") or the City Controller or their designee ("Controller") and the General Manager of the Recreation and Park Department or their designee (collectively, the "General Manager of the Recreation and Park Department") are hereby authorized to execute and deliver the Trust Agreement, and the Clerk is hereby authorized to attest to the Trust Agreement, with such changes, additions and modifications as made or approved in accordance with Section 14 hereof.

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

Section 6. Approval of the Property Lease. The form of the Property Lease between the City and the Trustee, as presented to the Board, a copy of which is on file with the Clerk, is hereby approved. The Mayor or the Controller and the General Manager of the Recreation and Park Department are hereby authorized to execute and deliver the Property Lease, and the Clerk is hereby authorized to attest to the Property Lease, with such changes, additions and modifications as made or approved in accordance with Section 14 hereof.

Section 7. Approval of the Lease Agreement. The form of the Lease Agreement between the City and the Trustee, as presented to the Board, a copy of which is on file with the Clerk, is hereby approved. The Mayor or the Controller and the General Manager of the Recreation and Park Department are hereby authorized to execute and deliver the Lease Agreement, and the Clerk is hereby authorized to attest to the Lease Agreement with such changes, additions and modifications as made or approved in accordance with Section 14 hereof; provided, however, that the maximum Base Rental (as defined in the Lease Agreement) to be paid under the Lease Agreement in any fiscal year shall not exceed Three Million Dollars ~~Dollars~~ ($3,000,000) and the initial stated term of the Lease Agreement shall not extend beyond the 35th year following its date of execution, as such initial term may be extended in accordance with the Lease Agreement.

Section 8. Approval of the Leased Property and the Base Rental Payments. The Board hereby approves the leasing, pursuant to the terms of the Property Lease and the Lease Agreement, of all or a portion of the Leased Property. The Board also hereby approves the payment by the City of the Base Rental with respect thereto.

Section 9. Official Statement. The form of proposed Preliminary Official Statement describing the Certificates ("Preliminary Official Statement") submitted to the Board is approved and adopted as the Preliminary Official Statement describing the Certificates, with such additions, corrections and revisions as may be determined to be necessary or desirable made in accordance herewith. The Controller is authorized to cause the distribution of a Preliminary Official Statement deemed final for purposes of Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended ("Rule"), and to sign a certificate to that effect. The Director of Public Finance is authorized and directed to cause to be printed and mailed or electronically distributed to prospective bidders or purchasers for the Certificates the Preliminary Official Statement in substantially the form of the Preliminary Official Statement approved and adopted by this Ordinance, as completed, supplemented, corrected or revised. The Controller is authorized and directed to approve, execute, and deliver the final Official Statement with respect to the Certificates, which final Official Statement shall be in the form of the Preliminary Official Statement, with such additions, corrections and revisions as may be determined to be necessary or desirable made in accordance herewith and as are permitted under the Rule. The Director of Public Finance is authorized and directed to cause to be printed and mailed or electronically distributed the final Official Statement to all actual initial purchasers of the Certificates.

Section 10. Continuing Disclosure Certificate. The form of Continuing Disclosure Certificate ("Continuing Disclosure Certificate"), to be signed by the Controller to permit the

original purchasers of the Certificates to comply with the Rule, submitted to the Board is approved and adopted as the Continuing Disclosure Certificate, with such changes, additions and modifications as made or approved in accordance with Section 14 hereof. The Controller is authorized and directed to execute the Continuing Disclosure Certificate on behalf of the City and deliver the Continuing Disclosure Certificate to the original purchasers of the Certificates.

Section 11. Sale of the Certificates. The Controller or the Director of Public Finance is hereby authorized to cause the sale of the Certificates by competitive or negotiated sale. If sold by competitive sale, the Controller or the Director of Public Finance is hereby authorized and directed to award the Certificates to the bidder whose bid represents the lowest true interest cost to the City (as confirmed by the City's municipal advisor) and whose bid otherwise conforms to the bid requirements contained in the Official Notice of Sale.

The form of proposed Notice of Intention to Sell the Certificates ("Notice of Intention to Sell Certificates") submitted to the Board is approved and adopted as the Notice of Intention to Sell the Certificates, and the Controller or the Director of Public Finance is authorized and directed to cause the Notice of Intention to Sell Certificates, subject to such changes, additions and modifications as made or approved in accordance with Section 14 hereof, to be published once in *The Bond Buyer* or another financial publication generally circulated throughout the State of California.

If the Controller or the Director of Public Finance determines to sell the Certificates by negotiated sale, the Controller or the Director of Public Finance is hereby authorized to sell the Certificates by negotiated sale pursuant to one or more purchase contracts (each, a "Purchase Contract") by and between the City and the underwriters named therein; provided, however, that the underwriters' discount under any such Purchase Contract shall not exceed one and one-half percent (1.5%) of the principal amount of the Certificates.

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

Section 12. Reimbursement. The City declares its official intent to reimburse prior expenditures of the City incurred prior to the execution and delivery of the Certificates in connection with the Project or portions thereof with the proceeds of the Certificates. The Board declares the City's intent to reimburse the City with the proceeds of the Certificates for the expenditures with respect to the Project ("Expenditures" and each an "Expenditure") made on and after that date that is no more than 60 days prior to adoption of this Ordinance. The City reasonably expects on the date of adoption of this Ordinance that it will reimburse the Expenditures with the proceeds of the Certificates.

Each Expenditure was and will be either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Certificates, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the City so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the City. The maximum aggregate principal amount of the Certificates expected to be executed and delivered for the Project is $29,000,000. The City shall make a reimbursement allocation, which is a written allocation by the City that evidences the City's use of proceeds of the Certificates to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event

more than three years after the date on which the Expenditure is paid. The City recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain *de minimis* amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.

Section 13. Appraisal Not Required. The appraisal requirement in Section 23.14 of the Administrative Code shall not apply to any transfer contemplated under this Ordinance.

Section 14. General Authority. The Mayor, the City Treasurer, the City Attorney, the City Controller, the City Administrator, the Director of Public Finance, the Clerk, the General Manager of the Recreation and Park Department, the Director of Transportation and other officers of the City and their duly authorized deputies, designees and agents are hereby authorized and directed, jointly and severally, to take such actions and to execute and deliver such certificates, agreements (including, without limitation, any escrow agreements), requests or other documents as they may deem necessary or desirable to accomplish the purposes of this Ordinance, including but not limited to the execution and delivery of the Property Lease, the Lease Agreement, the Trust Agreement, the Continuing Disclosure Certificate, the Purchase Contract and the Certificates, a quitclaim deed and/or termination agreement to evidence termination of the Ground Lease, an agreement regarding transfer of the Project and Project operations to the City consistent with this Ordinance and the Ground Lease, to obtain bond insurance and/or other credit enhancements and/or a surety policy with respect to the Certificates, to obtain title insurance, to clear any encumbrances to title and to carry out other title work and transfer jurisdiction of the Concourse Garage to the Commission in accordance with Proposition N. Any such actions are solely intended to further the purposes of this Ordinance, and are subject in all respects to the terms of this Ordinance. No such actions shall increase the risk to the City or require the City to spend any resources not otherwise granted herein. Final versions of any such documents shall be provided to the Clerk of the

Board for inclusion in the official file within 30 days of execution (or as soon thereafter as final documents are available) by all parties.

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

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

Section 17. Ratification of Prior Actions. All actions authorized consistent with any documents presented herein and approved by this Ordinance but heretofore taken are hereby ratified, approved and confirmed by the Board.

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ MARK D. BLAKE
MARK D. BLAKE
Deputy City Attorney

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# City and County of San Francisco
# Tails
# Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**File Number:** 240723 **Date Passed:** September 10, 2024

Ordinance authorizing the execution and delivery of Certificates of Participation on a tax-exempt or taxable basis evidencing and representing an aggregate principal amount of not to exceed $29,000,000 to fund all or a portion of the acquisition of the Concourse Garage; authorizing the issuance of commercial paper notes in advance of the delivery of the Certificates; approving the form of Trust Agreement between the City and County of San Francisco and the Trustee (including certain indemnities contained therein); authorizing the selection of the Trustee by the Director of Public Finance; approving respective forms of a Property Lease and a Lease Agreement, each between the City and County of San Francisco and the Trustee for the lease and lease back of certain property and facilities of the City; approving the forms of Purchase Contract, Official Notice of Sale, and Notice of Intention to Sell Certificates; directing the publication of the Notice of Intention to Sell Certificates; approving the form of the Preliminary Official Statement and the form and execution of the Official Statement relating to the sale of the Certificates; approving the form of the Continuing Disclosure Certificate; granting general authority to City officials to take necessary actions in connection with the authorization, execution, sale and delivery of the Certificates, including termination of the Ground Lease and transfer of the Concourse Garage property and related property to the City and County of San Francisco under the jurisdiction of the Recreation and Park Commission; approving modifications to documents and agreements; declaring the City's intent to reimburse certain expenditures; and ratifying previous actions taken in connection therewith, as defined herein.

July 31, 2024 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

July 31, 2024 Budget and Finance Committee - RECOMMENDED AS AMENDED

September 03, 2024 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

September 10, 2024 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 240723

**I hereby certify that the foregoing Ordinance was FINALLY PASSED on 9/10/2024 by the Board of Supervisors of the City and County of San Francisco.**

**Angela Calvillo**
**Clerk of the Board**

**London N. Breed**
**Mayor**

9/12/24

**Date Approved**