

1 [Authorizing Certificates of Participation - Animal Care and Control Renovation Project - Not to  
2 Exceed \$60,500,000]

3 **Resolution 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 not to exceed \$60,500,000 to finance the costs of acquisition, construction, and**  
6 **improvement of an animal care and control facility to be located on property within the**  
7 **City; authorizing the issuance of commercial paper notes in advance of the delivery of**  
8 **the Certificates; approving the form of Trust Agreement between the City and County**  
9 **of San Francisco and the Trustee (including certain indemnities contained therein);**  
10 **authorizing the selection of the Trustee by the Director of Public Finance; approving**  
11 **respective forms of a Property Lease and a Lease Agreement, each between the City**  
12 **and the Trustee for the lease and lease back of all or a portion of certain City real**  
13 **property and hospital property and facilities; approving the forms of Purchase**  
14 **Contract, Official Notice of Sale, and Notice of Intention to Sell Certificates; directing**  
15 **the publication of the Notice of Intention to Sell Certificates; approving the form of the**  
16 **Preliminary Official Statement and the form and execution of the Official Statement**  
17 **relating to the sale of the Certificates; approving the form of the Continuing Disclosure**  
18 **Certificate; granting general authority to City officials to take necessary actions in**  
19 **connection with the authorization, execution, sale and delivery of the Certificates, as**  
20 **defined herein; approving modifications to documents and agreements, as defined**  
21 **herein; declaring the City's intent to reimburse certain expenditures; and ratifying**  
22 **previous actions taken in connection therewith, as defined herein.**

23  
24 WHEREAS, The Board of Supervisors (the "Board of Supervisors" or the "Board") of  
25 the City and County of San Francisco (the "City") desires to finance the cost of the acquisition,

1 construction and improvement of the City and County of San Francisco Animal Care and  
2 Control replacement facility located at 1419 Bryant Street (the “Animal Care and Control  
3 Renovation Project”) through the execution and delivery of one or more series of certificates  
4 of participation (the “Certificates”); and

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

8 WHEREAS, In advance of the execution and delivery of the Certificates, the Board  
9 desires to authorize the issuance from time to time of commercial paper notes under the City’s  
10 commercial paper program to fund costs of the Animal Care and Control Renovation Project  
11 on an interim basis until the Certificates are executed and delivered to provide permanent  
12 financing on a long-term basis; and

13 WHEREAS, In connection with the execution and delivery of the Certificates, the Board  
14 desires to cause the execution of a Property Lease (the “Property Lease”), pursuant to which  
15 the City will lease to the Trustee all or a portion of City property located at (i) 1 Newhall – Lot  
16 030, Block 4570, (ii) all or a portion of City real property located at 1401 Bryant – Lot 002,  
17 Block 3904 Street, San Francisco or (iii) all or a portion of City real property located at Laguna  
18 Honda Hospital and Rehabilitation Center – Portion of Lot 7, Block 2842 (collectively, the  
19 “Leased Property”), and a Lease Agreement (the “Lease Agreement”), pursuant to which the  
20 Trustee will lease the Leased Property back to the City; 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 Resolution, 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, the  
8 Purchase Contract and to cause the execution and delivery of the Certificates in the manner  
9 and form provided in this Resolution; and

10           WHEREAS, The City has paid and expects to pay certain expenditures in connection  
11 with the Animal Care and Control Renovation Project to be financed by the Certificates prior to  
12 the execution and delivery of the Certificates, and the City intends to reimburse itself and to  
13 pay 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  
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 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 3 years after the expenditure is paid; and

23           WHEREAS, The adoption of this Resolution shall constitute authorization of the  
24 Certificates within the meaning of Section 864 of the California Code of Civil Procedure and  
25 any Validation Act that is effective after this Resolution takes effect; now, therefore, be it

1 RESOLVED, By the Board of Supervisors of the City and County of San Francisco, as  
2 follows:

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

5 Section 2. File Documents. The documents presented to the Board and on file with  
6 the Clerk of the Board or her designee (collectively, the “Clerk”) are contained in File No.  
7 161198.

8 Section 3. Authorization of the Certificates. The Board hereby authorizes and  
9 approves the execution and delivery of the Certificates in accordance with the Trust  
10 Agreement. The Board hereby approves the issuance of commercial paper notes from time to  
11 time to fund certain costs relating to the Animal Care and Control Renovation Project. The  
12 proceeds of the Certificates will be used to fund (i) costs of Animal Care and Control  
13 Renovation Project, including repayment of commercial paper notes, interest, and program  
14 fees thereon issued for such purpose; (ii) a reserve fund, if required to market the Certificates;  
15 (iii) capitalized interest, if any; and (iv) costs of issuance of the Certificates. The Certificates  
16 shall be designated as “Certificates of Participation (Animal Care and Control Renovation  
17 Project),” with such other or additional designation, including the year of execution and  
18 delivery, as determined by the Director of Public Finance of the City or her designee, acting  
19 for and on behalf of the City Controller (collectively, the “Director of Public Finance”).

20 The Certificates shall evidence an aggregate principal amount of not to exceed  
21 \$60,500,000, and shall evidence interest rate at the maximum rate provided by law or 12%  
22 per annum, whichever is lower. The Certificates shall be subject to prepayment as set forth in  
23 the Lease Agreement and Trust Agreement. The Director of Public Finance is hereby  
24 authorized, to the extent such officer deems it necessary or advisable and financially  
25

1 advantageous to the City, to procure credit enhancement for the Certificates, including but not  
2 limited to municipal bond insurance or a debt service reserve fund surety policy.

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

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

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

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 (if  
24 necessary) of the City on the Property Lease, with such changes, additions and modifications  
25 as the Mayor or the Controller may make or approve 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 the Mayor may make or approve in accordance with Section 13 hereof; provided, however,  
7 that the Maximum Base Rental (as defined in the Lease Agreement) to be paid under the  
8 Lease Agreement in any fiscal year shall not exceed \$5,600,000 and the initial stated term of  
9 the Lease Agreement shall not extend beyond the 35th year following its date of execution, as  
10 such initial term may be extended in accordance with the Lease Agreement.

11           Section 7.   Approval of the Leased Property and the Base Rental Payments. The  
12 Board hereby approves the leasing, pursuant to the terms of the Property Lease and the  
13 Lease Agreement, of all or a portion of the Leased Property, which the Director of Public  
14 Finance determines is in the best interest of the City. The Board also hereby approves the  
15 payment by the City of the Base Rental with respect thereto; provided the payment of such  
16 Base Rental does not exceed the Maximum Base Rental as provided in Section 6 above.

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

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

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

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

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

8           If the Controller or the Director of Public Finance determines to sell the Certificates by  
9 negotiated sale, the Controller or the Director of Public Finance is hereby authorized to sell  
10 the Certificates by negotiated sale pursuant to one or more purchase contracts (each, a  
11 “Purchase Contract”) by and between the City and the underwriters named therein; provided,  
12 however, that the underwriters’ discount under any such Purchase Contract shall not exceed  
13 1% of the principal amount of the Certificates.

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

20           Section 11. Reimbursement. The City declares its official intent to reimburse prior  
21 expenditures of the City incurred prior to the execution and delivery of the Certificates in  
22 connection with the Animal Care and Control Renovation Project or portions thereof with the  
23 proceeds of the Certificates. The Board of Supervisors declares the City’s intent to reimburse  
24 the City with the proceeds of the Certificates for the expenditures with respect to the Animal  
25 Care and Control Renovation Project (the “Expenditures” and each an “Expenditure”) made



1 on and after that date that is no more than 60 days prior to adoption of this Resolution. The  
2 City reasonably expects on the date of adoption of this Resolution that it will reimburse the  
3 Expenditures with the proceeds of the Certificates.

4 Each Expenditure was and will be either (a) of a type properly chargeable to a capital  
5 account under general federal income tax principles (determined in each case as of the date  
6 of the Expenditure), (b) a cost of issuance with respect to the Certificates, (c) a nonrecurring  
7 item that is not customarily payable from current revenues, or (d) a grant to a party that is not  
8 related to or an agent of the City so long as such grant does not impose any obligation or  
9 condition (directly or indirectly) to repay any amount to or for the benefit of the City. The  
10 maximum aggregate principal amount of the Certificates expected to be executed and  
11 delivered for the Animal Care and Control Renovation Project is \$60,500,000. The City shall  
12 make a reimbursement allocation, which is a written allocation by the City that evidences the  
13 City's use of proceeds of the Certificates to reimburse an Expenditure, no later than 18  
14 months after the later of the date on which the Expenditure is paid or the Animal Care and  
15 Control Renovation Project is placed in service or abandoned, but in no event more than three  
16 years after the date on which the Expenditure is paid. The City recognizes that exceptions  
17 are available for certain "preliminary expenditures," costs of issuance, certain *de minimis*  
18 amounts, expenditures by "small issuers" (based on the year of issuance and not the year of  
19 expenditure) and expenditures for construction projects of at least 5 years.

20 Section 12. General Authority. The Mayor, the City Treasurer, the City Attorney, the  
21 City Controller, the City Administrator, the Director of Public Finance, the Clerk and other  
22 officers of the City and their duly authorized deputies, designees and agents are hereby  
23 authorized and directed, jointly and severally, to take such actions and to execute and deliver  
24 such certificates, agreements, requests or other documents as they may deem necessary to  
25 accomplish the purposes of this Resolution, including but not limited to the execution and

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

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

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

22 Section 15. Ratification of Prior Actions. All actions heretofore taken and consistent  
23 with any documents presented herein and approved by this Resolution are hereby ratified,  
24 approved and confirmed by the Board; provided however that any such ratified actions are  
25 subject in all respects to the terms of this Resolution.

1           Section 16. Effective Date. This Resolution shall take effect upon its enactment.  
2           Enactment occurs when the Mayor signs the resolution, the Mayor returns the resolution  
3           unsigned or does not sign the resolution within ten days of receiving it, or the Board of  
4           Supervisors overrides the Mayor's veto of the resolution.

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6           APPROVED AS TO FORM:  
7           DENNIS J. HERRERA  
8           City Attorney

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By: \_\_\_\_\_  
Mark D. Blake  
Deputy City Attorney  
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