

FILE NO.

RESOLUTION NO.

1 [Resolution Authorizing Certificates of Participation (Animal Care & Control Renovation
Project) Not to Exceed \$60,500,000]

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

21 WHEREAS, The Board of Supervisors (the "Board of Supervisors" or the "Board") of
22 the City and County of San Francisco (the "City") desires to finance the cost of the acquisition,
23 construction and improvement of the City and County of San Francisco Animal Care & Control
24 replacement facility located at 1419 Bryant Street (the "Animal Care & Control Renovation

25 Mayor Lee, Supervisor _____
BOARD OF SUPERVISORS

1 Project”) through the execution and delivery of one or more series of certificates of
2 participation (the “Certificates”); and

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

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

11 WHEREAS, In connection with the execution and delivery of the Certificates, the Board
12 desires to cause the execution of a Property Lease (the “Property Lease”), pursuant to which
13 the City will lease to the Trustee a portion of Lot _____, Block _____, known as _____
14 Street, San Francisco (the “Leased Property”), and a Lease Agreement (the “Lease
15 Agreement”), pursuant to which the Trustee will lease the Leased Property back to the City;
16 and

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

21 WHEREAS, Upon the effectiveness of this Resolution, all conditions, things and acts
22 required by law to exist, to happen and to be performed precedent to and as a condition of the
23 execution and delivery of the Property Lease, the Lease Agreement, the Trust Agreement and
24 the Certificates will exist, have happened and have been performed in due time, form and
25 manner in accordance with applicable law, and the City shall be authorized pursuant to its

Mayor Lee, Supervisor _____
BOARD OF SUPERVISORS

1 Charter and other applicable law to execute and deliver the Property Lease, the Lease
2 Agreement, the Continuing Disclosure Certificate, the Trust Agreement and, as applicable,
3 the Purchase Contract and to cause the execution and delivery of the Certificates in the
4 manner and form provided in this Resolution; and

5 WHEREAS, The City has paid and expects to pay certain expenditures in connection
6 with the Animal Care & Control Renovation Project to be financed by the Certificates prior to
7 the execution and delivery of the Certificates, and the City intends to reimburse itself and to
8 pay third parties for such prior expenditures from the proceeds of the Certificates; and

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

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

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

21
22
23
24
25

1 NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the City and
2 County of San Francisco, as 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 _____.

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 & Control Renovation Project. The
12 proceeds of the Certificates will be used to fund (i) costs of Animal Care & Control Renovation
13 Project, including repayment of commercial paper notes, interest, and program fees thereon
14 issued for such purpose; (ii) a reserve fund, if required to market the Certificates; (iii)
15 capitalized interest, if any; and (iv) costs of issuance of the Certificates. The Certificates shall
16 be designated as “Certificates of Participation (Animal Care & Control Renovation Project),”
17 with such other or additional designation, including the year of execution and delivery, as
18 determined by the Director of Public Finance of the City or her designee, acting for and on
19 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 of the
24 City on the Property Lease, with such changes, additions and modifications as the Mayor or
25 the Controller may make or approve in accordance with Section 13 hereof.

Mayor Lee, Supervisor ____
BOARD OF SUPERVISORS

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. The Board also hereby approves
14 the payment by the City of the Base Rental with respect thereto.

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

Mayor Lee, Supervisor _____
BOARD OF SUPERVISORS

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

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

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

23 The form of proposed Notice of Intention to Sell the Certificates (the "Notice of Intention
24 to Sell Certificates") submitted to the Board is approved and adopted as the Notice of
25 Intention to Sell the Certificates, and the Controller or the Director of Public Finance is

1 authorized and directed to cause the Notice of Intention to Sell Certificates, subject to such
2 corrections, revisions or additions as may be made in accordance herewith, to be published
3 once in *The Bond Buyer* or another financial publication generally circulated throughout the
4 State of California.

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

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

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

Mayor Lee, Supervisor ____
BOARD OF SUPERVISORS

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 Animal Care & Control Renovation Project is \$60,500,000. The City shall
9 make a reimbursement allocation, which is a written allocation by the City that evidences the
10 City's use of proceeds of the Certificates to reimburse an Expenditure, no later than 18
11 months after the later of the date on which the Expenditure is paid or the Animal Care &
12 Control Renovation Project is placed in service or abandoned, but in no event more than three
13 years after the date on which the Expenditure is paid. The City recognizes that exceptions
14 are available for certain "preliminary expenditures," costs of issuance, certain *de minimis*
15 amounts, expenditures by "small issuers" (based on the year of issuance and not the year of
16 expenditure) and expenditures for construction projects of at least 5 years.

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

Mayor Lee, Supervisor ____
BOARD OF SUPERVISORS

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

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

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

19 Section 15. Ratification of Prior Actions. All actions heretofore taken and consistent
20 with any documents presented herein and approved by this Resolution are hereby ratified,
21 approved and confirmed by the Board.

22
23
24
25

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.

5

6

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

8

9

10 By: _____
11 Mark D. Blake
12 Deputy City Attorney

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25