

1 [Approving Agreement with Northern California Joint Pole Association.]

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3 **Ordinance approving an agreement between the City and County of San Francisco and**  
4 **the Northern California Joint Pole Association for a term potentially in excess of ten**  
5 **years and indemnifying the Northern California Joint Pole Association and its members**  
6 **from certain third-party claims for personal injury or property damage, and waiving**  
7 **certain requirements of the San Francisco Administrative Code with respect to the**  
8 **agreement.**

9 Note: Additions are *single-underline italics Times New Roman*;  
10 deletions are *strikethrough italics Times New Roman*.  
11 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. FINDINGS. The Board of Supervisors hereby finds and declares as follows:

14 (a) The Northern California Joint Pole Association ("NCJPA") is a non-profit  
15 association of electrical utilities, telephone companies, cable television providers, irrigation  
16 and utility districts, and municipal utilities whose sole purpose is to administer the shared  
17 ownership, maintenance, use, setting, replacement, dismantling, abandonment or removal of  
18 jointly owned utility poles.

19 (b) Members of the NCJPA are authorized to jointly own utility poles in Northern  
20 California (including San Francisco) and to install their facilities thereon, thereby reducing the  
21 cost and clutter that would result from separately owned utility poles.

22 (c) Through its various agreements, by-laws and manuals, the NCJPA establishes  
23 the terms and conditions under which its members share the cost of owning and maintaining  
24 jointly owned utility poles.

1 (d) Membership in the NCJPA will allow the City to attach telecommunications,  
2 electrical and transit facilities to jointly owned utility poles in areas of the City served by  
3 aboveground, pole-mounted utility facilities.

4 (e) All City agencies, including but not limited to, the Department of  
5 Telecommunications and Information Services (“DTIS”), the Municipal Transportation Agency  
6 (including the Municipal Railway and the Department of Parking and Traffic) and the Public  
7 Utilities Commission, will be entitled to use the jointly owned utility poles by virtue of the City’s  
8 membership in the NCJPA.

9 (f) As a member the NCJPA, the City may select jointly owned utility poles for  
10 which it seeks joint ownership and may install its facilities on those poles. Approximately 50%  
11 of the City is served by utility facilities mounted on jointly owned utility poles. Those poles  
12 typically contain electricity, telephone and cable television facilities.

13 (g) If the City needs to construct new utility poles, the City may designate poles it  
14 wishes to include in the joint pole pool, if any. The City may instead elect to reserve certain  
15 poles for its exclusive use. If another member of the NCJPA wishes to use a utility pole the  
16 City has designated as a potential jointly owned utility pole, it may buy into the designated  
17 pole. City-owned streetlight and traffic light poles are not suitable for designation as jointly  
18 owned utility poles.

19 (h) The City was a member of the NCJPA from 1913 until 1998. The City was a  
20 party to the NCJPA agreement dated October 10, 1960 (the “1960 NCJPA Agreement”).

21 (i) On January 1, 1998, members of the NCJPA entered into a new agreement (the  
22 “1998 NCJPA Agreement”). To remain a member of the NCJPA, the NCJPA required the City  
23 to become a party to the 1998 NCJPA agreement. The 1998 NCJPA agreement is still in  
24 force and effect. The City has not yet become a party to the 1998 NCJPA agreement.  
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1 (j) As a result of its being a party to the 1960 NCJPA agreement, the City continues  
2 to share ownership in jointly owned utility poles that were constructed and used by the City  
3 prior to 1998. Without becoming a party to the 1998 NCJPA agreement, however, the City  
4 cannot share ownership in any additional jointly owned utility poles, even when new poles are  
5 installed to replace existing jointly owned utility poles that the City has been using.

6 (k) The 1998 NCJPA agreement is a standard agreement that all members must  
7 execute. The NCJPA is unwilling to modify the terms and conditions of the agreement to  
8 accommodate the City.

9 (l) Without joining the NCJPA, the City would not be able to cost effectively use  
10 jointly owned utility poles to install facilities that are necessary to serve areas of the City  
11 where utilities are placed above ground. Instead, the City would be required to construct its  
12 own poles to serve those areas.

13 (m) DTIS will submit the City's application for membership to the NCJPA. If the  
14 Board approves this ordinance, and the NCJPA approves the City's application, DTIS will sign  
15 the agreement on behalf of the City and pay the NCJPA the \$5000 new member fee and the  
16 annual fee for the first year.

17 (n) The City's membership in the NCJPA will commence and remain in effect until  
18 the City elects to withdraw from NCJPA, on twelve months' written notice, or until such time as  
19 three-quarters of the members of the NCJPA vote to terminate the agreement. If the City  
20 terminates its membership, the joint utility poles used by the City will still be governed by the  
21 NCJPA agreement.

22 (o) To join the NCJPA, the City will have to agree to indemnify and hold harmless  
23 the NCJPA and its members from any claims arising out of injuries or death to persons or  
24 damages to property caused or related to the City's negligence and the City's installation or  
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1 maintenance of equipment on joint utility poles. The Risk Manager has approved this  
2 provision.

3 (p) The annual cost of membership in the NCJPA is currently \$565 per year. The  
4 City will incur additional costs when a City agency determines that joint ownership of a utility  
5 pole is warranted. Those additional costs cannot be determined at this time.

6 (q) Funds for the membership fee and this year's annual fee are available in DTIS's  
7 budget. If there is an unreasonable increase in the annual membership fee in future years,  
8 DTIS may determine that is appropriate to give notice of cancellation to the NCJPA.

9 Section 2. The Board of Supervisors hereby approves the agreement between the City  
10 and County of San Francisco and the NCJPA, including the indemnification provision, and  
11 authorizes the Executive Director of the Department of Telecommunications and Information  
12 Services to execute the agreement and to take all steps necessary for the City to become a  
13 member of the NCJPA. A copy of the agreement is on file with the Clerk of the Board of  
14 Supervisors in File No. \_\_\_\_\_.

15 Section 3. For the purpose of this agreement, the Board of Supervisors finds that it is  
16 reasonable and in the public interest to grant the waivers specified below:

17 A. The Board of Supervisors hereby waives the requirement of San Francisco  
18 Administrative Code Section 21.35 that every contract include a statement regarding liability  
19 of claimants for submitting false claims to the City. The Board finds that there is no need to  
20 include this provision in the NCJPA agreement because joining the NCJPA will not subject the  
21 City to the types of claims that are prohibited by Section 21.35.

22 B. The Board of Supervisors hereby waives the requirement of San Francisco  
23 Administrative Code Section 21.9 that contracts not include an automatic renewal provision.  
24 The Board finds that it is in the public interest to join the NCJPA for an indefinite term. The  
25 City's need to be a member of the NCJPA will be coextensive with the continued existence of

1 the NCJPA. If not, the City can elect to terminate its membership on twelve months' written  
2 notice.

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

6 By: \_\_\_\_\_  
7 William K. Sanders  
8 Deputy City Attorney

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