

1 [Construction Management and Oversight Services Intergovernmental Agreement - Transbay
2 Joint Powers Authority - \$4,491,461]

3 **Resolution retroactively approving a Transbay Project Construction Management and**
4 **Oversight Services Intergovernmental Agreement with the Transbay Joint Powers**
5 **Authority, including anticipated compensation to the City, through the Department of**
6 **Public Works, for performing such services, in the total amount of \$4,491,461 for a**
7 **three-year term commencing January 4, 2016, and mutual indemnity provisions; and**
8 **authorizing the Deputy Director of the Department of Public Works to execute that**
9 **Agreement.**

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11 WHEREAS, The City and County of San Francisco (the "City"), the Alameda-Contra
12 Costa Transit District and the Peninsula Corridor Joint Powers Board have executed a Joint
13 Powers Agreement, dated as of April 4, 2001 (the "Joint Powers Agreement"), which Joint
14 Powers Agreement creates and establishes the Transbay Joint Powers Authority (the "TJPA");
15 and

16 WHEREAS, The Joint Powers Agreement and state law charge TJPA with financing,
17 design, development, construction, and operation of the Transbay Transit Center Program
18 (the "Transbay Project"), which includes: (1) the design and construction of a temporary
19 terminal and then the permanent Transbay Transit Center, including open space on the roof of
20 the Transit Center, a bus ramp and a bus storage facility, and the train box component of the
21 rail extension ("Phase 1"); (2) the extension of Caltrain tracks from their current San Francisco
22 terminus at Fourth and Townsend Streets to a new underground terminus beneath the
23 Transbay Transit Center to accommodate Caltrain and California High Speed Rail ("Phase
24 2"); and (3) activities related to implementation of the Redevelopment Plan for the Transbay
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1 Redevelopment Project Area, in coordination with the Office of Community Investment and
2 Infrastructure; and

3 WHEREAS, Under Section 6 of the Joint Powers Agreement establishing the TJPA and
4 at Article XII of the TJPA's Bylaws, the TJPA designated the City as the "Administrator" for the
5 TJPA, authorizing the City to provide necessary administrative services for the TJPA pursuant
6 to an administrative services agreement; and

7 WHEREAS, In 2001, the TJPA entered an Administrative Services Agreement with the
8 City, confirming the terms under which the TJPA may request that the City in its capacity as
9 Administrator for the TJPA provide assistance to the TJPA Staff, in cooperation with
10 consultants and contractors to the TJPA, to advance the Transbay Project; under the
11 Agreement, the City has from time to time since 2001 provided such assistance to TJPA Staff,
12 consultants, and contractors; and

13 WHEREAS, The TJPA has previously entered intergovernmental agreements with
14 departments and agencies of the City, including San Francisco's Department of Public Works
15 ("SF Public Works"), defining the roles and responsibilities of the TJPA and the City, and the
16 terms and conditions under which the City would provide services to the Transbay Project;
17 and

18 WHEREAS, On November 12, 2015, the TJPA Board of Directors adopted
19 Resolution No. 15-043 amending the Bylaws of the TJPA, to provide for the designation of a
20 person or entity to oversee all aspects of construction of the Transbay Project (including
21 design and project controls related to construction), who would take direction from and report
22 directly to the TJPA Board; and

23 WHEREAS, On March 10, 2016, the TJPA Board of Directors adopted Resolution
24 No. 16-006 granting SF Public Works exclusive authority, subject to TJPA Board supervision,
25 to oversee all aspects of construction of the Transbay Project, including, without limitation,

1 design and project controls related to construction of the Transbay Project for the purpose of
2 meeting the TJPA Board’s approved program budget and schedule for Phase 1; and

3 WHEREAS, On April 22, 2016, the TJPA Board of Directors adopted Resolution
4 No. 16-013 approving a proposed agreement between the TJPA and the City entitled the
5 “Transbay Project Construction Management and Oversight Services Intergovernmental
6 Agreement,” granting SF Public Works exclusive authority, subject to TJPA Board
7 supervision, to oversee all aspects of construction of the Transbay Project, defining the roles
8 and responsibilities of the TJPA and the City, and establishing the terms and conditions under
9 which the City will provide services to the Transbay Project (the “Agreement”); and

10 WHEREAS, The Agreement provides that the TJPA will compensate the City for
11 construction management and oversight services at hourly rates that include SF Public Works’
12 staff salary, benefits and applicable administrative costs, that based on an SF Public Works
13 estimate the value of such services will be a total of \$4,491,461 over a three-year period, with
14 a maximum payment of \$1,465,403 in 2016, \$1,488,835 in 2017 and \$1,537,223 in 2018, and
15 that the TJPA will pay for the City’s services through any eligible funding source within the
16 TJPA Board-approved Phase 1 program budget with the expectation that the payments be
17 cost-neutral to the TJPA (through savings SF Public Works will help achieve in that budget);
18 and

19 WHEREAS, The Agreement provides that the City and the TJPA will each mutually
20 indemnify the other for liabilities, losses, expenses, attorneys’ fees and costs, or claims
21 (“Claims”) for injury or damages arising out of their performance of the Agreement, but only in
22 proportion to and to the extent such Claims are caused by or result from the negligent or
23 intentional acts or omissions by the indemnifying party, and further the City’s obligation to
24 indemnify the TJPA excludes Claims relating to conditions existing on or before January 4,
25 2016 or actions that occurred on or before that date; and

1 WHEREAS, This Board of Supervisors (the “Board”) has previously adopted Resolution
2 No. 166-16, authorizing the City’s execution and delivery of lease revenue commercial paper
3 certificates of participation and direct placement revolving certificates of participation in the
4 maximum amount of \$260,000,000 (the “Interim Financing”) to close certain funding shortfalls
5 for the Transbay Project as identified by the Metropolitan Transportation Commission’s
6 (“MTC”) cost and risk review of Phase 1 of the Transbay Project, and that in connection with
7 the Interim Financing, the City will enter into a Cost Oversight Agreement under which
8 representatives of the City, the TJPA, and the MTC will participate in a Cost Review
9 Committee to provide recommendations to help ensure that the Interim Financing is timely
10 repaid and to oversee the proper expenditure by the TJPA of the proceeds of the Interim
11 Financing; and

12 WHEREAS, The Agreement, as approved and partially executed by the TJPA, is on file
13 with the Clerk of the Board of Supervisors in File No. 160513; and

14 WHEREAS, The Board has determined that the Agreement is an important component
15 of the TJPA’s work to complete construction of Phase 1 of the Transbay Project in a timely
16 fashion, which will result in more efficient delivery of improved public transit services to the
17 City, and is in the best interests of the City as well as the TJPA; now, therefore, be it

18 RESOLVED, That this Board approves the partially executed Agreement, substantially
19 in the form on file with the Clerk of the Board, together with any such additions and changes
20 as the Deputy Director of SF Public Works may deem appropriate, upon consultation with the
21 City’s Controller and the City Attorney, the execution of which by the City shall be conclusive
22 evidence of the approval of any such additions and changes; and, be it

23 FURTHER RESOLVED, That this Board authorizes the Deputy Director of SF Public
24 Works to execute the Agreement on behalf of the City; and, be it

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1 FURTHER RESOLVED, That within 30 days of the Agreement being fully executed by
2 all parties, SF Public Works shall provide the final Agreement to the Clerk of the Board for
3 inclusion in the official file.

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