

1 [Interagency Cooperation Agreement - Transbay Joint Powers Authority - Phase 2 of the
2 Transbay Program - Anticipated Revenue of Over \$1,000,000]

3 **Resolution approving an Interagency Cooperation Agreement between the Transbay**
4 **Joint Powers Authority (TJPA) and the City and County of San Francisco relating to**
5 **Phase 2 of the Transbay Program to provide for the City’s consultation, services, and**
6 **cooperation with TJPA to facilitate the planning, design, and construction of the**
7 **Project with an anticipated revenue of over \$1,000,000 over a 10-year term, effective**
8 **upon approval by the Board of Supervisors and the Mayor.**

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10 WHEREAS, The Transbay Joint Powers Authority (TJPA) is delivering the Transbay
11 Program, a visionary transportation and housing project that has transformed downtown San
12 Francisco and the San Francisco Bay Area’s regional transportation system by creating a
13 world class transportation hub in the heart of a new neighborhood; and

14 WHEREAS, The TJPA is a joint exercise of powers authority created by the City and
15 County of San Francisco, the Alameda-Contra Costa Transit District, the Peninsula Corridor
16 Joint Powers Board, the California High Speed Rail Authority, and Caltrans (ex officio); and

17 WHEREAS, TJPA completed Phase 1 of the Transbay Program, which included
18 construction of the Salesforce Transit Center and an underground train box to accommodate
19 Caltrain’s regional rail system terminus and California’s future high-speed rail system
20 terminus. The City provided consultation and cooperated with TJPA in many aspects of the
21 planning, design, construction, and financing of Phase 1 through multiple individual
22 intergovernmental agreements and memoranda of understanding between various individual
23 City departments and TJPA; and

1 WHEREAS, TJPA is actively engaged in delivery of Phase 2 of the Transbay Program,
2 the Downtown Rail Extension, which is now referred to as The Portal (the Project); the Project
3 will connect Caltrain’s regional rail system from its current station at Fourth and Townsend
4 Streets to the Salesforce Transit Center in downtown San Francisco; the rail alignment will be
5 constructed principally below grade to provide a critical link for Peninsula commuters and
6 travelers, as well as travelers on the state’s future high-speed rail system; and

7 WHEREAS, The Project will bring direct and indirect benefits to City residents and the
8 public by providing improved regional and statewide rail connections to downtown San
9 Francisco through easier and more efficient transit options for commuters, tourists, and
10 business travelers, who will support downtown San Francisco businesses and contribute to
11 the economic revitalization of San Francisco at large and the neighborhoods surrounding the
12 Project in particular; and

13 WHEREAS, TJPA has primary jurisdiction with respect to all matters concerning the
14 financing, design, development, construction, and operation of the Transbay Program under
15 California Public Resources Code, Section 5027.1; however, the design, construction, and
16 operation of Phase 2 of the Transbay Program will affect property, improvements, programs,
17 and services of the City, such that TJPA requires permissions and approvals from the City as
18 the entity that owns and/or has the right to control such items; and

19 WHEREAS, As in Phase 1, TJPA would benefit from the consultation, cooperation,
20 expertise, and experience various City departments can give in matters related to the
21 planning, design, and construction of the Project; and

22 WHEREAS, The City and TJPA have negotiated and desire to enter into an
23 Interagency Cooperation Agreement between the Transbay Joint Powers Authority and the
24 City and County of San Francisco Relating to Phase 2 of the Transbay Program (Agreement
25

1 or ICA); the Agreement provides for City’s consultation, services, and cooperation with TJPA
2 to facilitate the planning, design, and construction of the Project; and

3 WHEREAS, Building on the experience of negotiating and administering multiple
4 intergovernmental agreements between individual City agencies and TJPA for Phase 1, the
5 City and TJPA have developed a single agreement to which all City agencies affected by the
6 Project (City Agencies) will have the option to become party, in order to move the Project
7 forward as expeditiously and seamlessly as possible, with the purpose of increasing
8 efficiency, providing uniform terms and processes, and reducing administrative costs; and

9 WHEREAS, The Agreement addresses a process for identification and review of City
10 improvements that will be impacted by the Project, and the planning, design, relocation and
11 construction of such City improvements; the Agreement does not obligate any City
12 department to act or to give any approvals; and

13 WHEREAS, The Agreement does not include any City obligations with respect to
14 temporary or permanent occupancy of certain City right-of-way and City property, which will
15 be required for completion of the Project but will be the subject of future legislative action by
16 the Board of Supervisors; any permanent rights to occupy City property or right-of-way is
17 expected to be proposed at a later date as a conveyance of subsurface easements, with
18 corresponding street vacation actions of the proposed subsurface easement areas; and

19 WHEREAS, It is currently anticipated that the following ten (10) City Agencies will
20 become parties to the Agreement: the Port, Department of Building Inspection, Department of
21 Technology, Fire Department, Municipal Transportation Agency, Office of Economic and
22 Workforce Development, Planning Department, Public Utilities Commission, Public Works,
23 and the Real Estate Division; additional City Agencies may join the Agreement in the future as
24 the Project needs evolve and additional agencies’ cooperation and facilitation is requested by
25 TJPA; and

1 WHEREAS, The Project will be advanced over the course of several years, and TJPA
2 and the City expect the scope of tasks provided by City Agencies pursuant to the Agreement
3 to change and adjust over time, therefore each City Agency that consents to the Agreement is
4 expected to enter into its own Annual Scope and Budget (ASB) pertaining to the tasks it will
5 undertake and the budget for those tasks for each Fiscal Year, each of which will be attached
6 to the Agreement as a part of Exhibit B; and

7 WHEREAS, TJPA and the City intend for the Agreement and ASBs to provide a flexible
8 mechanism that will accommodate the evolving City tasks that will be undertaken by City
9 Agencies for the Project as the Project advances; therefore, the Agreement is structured to:
10 provide a consistent set of general terms to govern City tasks, which terms are set forth in the
11 body of the Agreement; provide a process to amend each City Agency's ASB each year with
12 the current year's annual budgeting and agreement on scope of City tasks; provide a
13 mechanism for reimbursement of City Agency costs in connection with its City tasks; and
14 provide clarity and flexibility regarding the approval process for amendments to the
15 Agreement, and for amendments and replacements of the ASBs; and

16 WHEREAS, The Agreement contemplates that each City Agency's ASB may be
17 amended and replaced each Fiscal Year to revise the City tasks and budget described in its
18 ASB for the succeeding Fiscal Year(s); each City Agency's individual ASB incorporates the
19 general terms of the body of the Agreement except as otherwise specifically provided in its
20 ASB; each City Agency's annual ASB will not require Board of Supervisors approval except as
21 part of the approval of the City Agency's annual budget or if such ASB exceeds \$1,000,000 in
22 revenue; in addition, Board of Supervisors approval is required for any change that would (1)
23 materially alter the rights, benefits or obligations of City under the body of the Agreement or its
24 Appendix A; (2) alter the scope or increase the impact of the Project in a manner that
25 materially impairs City's rights, benefits, obligations, or liabilities under the body of the

1 Agreement or its Appendix A; (3) change the permitted uses of the City property or City right-
2 of-way occupied by the Project; or (4) extend the term of the Agreement; and

3 WHEREAS, City Agencies may suspend or discontinue work under an ASB if its
4 budget is exceeded, and any City Agency may elect not to enter into an ASB for a particular
5 Fiscal Year, such that its tasks pursuant to its ASB may expire; and

6 WHEREAS, The Agreement has a term of ten (10) years, with one option to extend for
7 an additional five (5) year term subject to the Board of Supervisors' approval; and

8 WHEREAS, The San Francisco Public Works Department (Public Works) will serve as
9 the lead City Agency for distributing design and improvement plans, coordinating the City's
10 responses to such plans, and assisting departments and TJPA with dispute resolution and
11 schedule adherence; and

12 WHEREAS, The Office of Economic and Workforce Development (OEWD), in
13 consultation with Public Works and the City Agencies, will serve as the liaison managing
14 preparation and processing of City invoices under the ICA; and

15 WHEREAS, On April 22, 2004, by Motion No. 16773, the Planning Commission
16 certified the final Environmental Impact Statement/Environmental Impact Report for the
17 Transbay Program (2004 EIS/EIR) (Planning Department Case No. 2000.048E) in
18 accordance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (Cal.
19 Code of Regulations Title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco
20 Administrative Code; and

21 WHEREAS, On June 15, 2004, by Motion No. 04-67, the Board of Supervisors affirmed
22 the Planning Commission's certification of the 2004 EIS/EIR; and on September 28, 2004, by
23 Resolution No. 612-04, adopted findings that various actions related to the Transbay Program
24 complied with CEQA; and in 2005 and 2006, by Ordinance Nos. 124-05 and 99-06, adopted
25 additional CEQA findings related to the Transbay Program; and

1 WHEREAS, Subsequent to the adoption of the Final EIS/EIR, the San Francisco
2 Redevelopment Agency, the Successor Agency to the San Francisco Redevelopment
3 Agency, and the TJPA have approved ten addenda to the 2004 EIS/EIR, and made requisite
4 findings under CEQA; and

5 WHEREAS, In 2018, the Federal Transit Administration and TJPA prepared a joint
6 Supplemental EIS/EIR to evaluate certain proposed changes to the Transbay Program (2018
7 SEIS/EIR); and on December 13, 2018, the TJPA certified the 2018 SEIS/EIR, approved
8 certain revisions to the Transbay Program, adopted the additional mitigation measures
9 identified therein, and adopted CEQA findings (2018 Transbay Program CEQA findings), on
10 file with the Clerk of the Board of Supervisors in File No. 230602; and

11 WHEREAS, On January 12, 2023, the TJPA approved certain revisions to the DTX
12 component of the Transbay Program (DTX Revisions), adopted an Addendum to the 2018
13 SEIS/EIR, which contains an analysis of the environmental effects that may result from the
14 DTX Revisions, adopted a Revised Mitigation Monitoring and Reporting Program, attached to
15 the Agreement as Appendix C, and determined that the DTX Revisions do not require major
16 revisions to the 2018 SEIS/EIR due to new or substantially more severe environmental effects
17 and do not require further environmental review; now, therefore, be it

18 RESOLVED, The Board of Supervisors has reviewed and considered the 2004 EIS/EIR
19 and subsequent addenda, the 2018 SEIS/EIR, the Addendum to the 2018 SEIS/EIR, all
20 associated CEQA findings, and the record as a whole, and finds that approval of the
21 Agreement is within the scope of the project evaluated in these environmental review
22 documents, that these environmental review documents are adequate for its use in approving
23 the Agreement, and that no further environmental review is required; adopts the 2018
24 Transbay Program CEQA findings; and adopts the Revised Mitigation Monitoring and
25 Reporting Program; and, be it

1 FURTHER RESOLVED, The City's approval of the Agreement is not an approval of
2 any element of Phase 2 of the Transbay Program, and does not guarantee City approvals
3 necessary to effectuate the Project; all such approvals shall be made through ordinary City
4 processes as provided in the Agreement, if at all, following completion of any required
5 Environmental Review; the City, acting in a regulatory capacity, reserves all rights to reject
6 proposed permits and other requested TJPA approvals relating to Phase 2 as set forth in the
7 Agreement; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors hereby approves the
9 Agreement, in substantially the form presented to the Board of Supervisors; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the Director
11 of Public Works, in the name of and on behalf of the City, to enter into any amendments or
12 modifications to the Agreement and any other documents or instruments in connection with
13 the Agreement that the Director of Public Works determines, in consultation with the City
14 Attorney, are in the City's best interest, do not materially alter the rights, benefits or
15 obligations of City under the body of the Agreement or its Appendix A; do not alter the scope
16 or increase the impact of the Project in a manner that materially impairs City's rights, benefits,
17 obligations, or liabilities under the body of the Agreement or its Appendix A; do not change the
18 contemplated permitted uses of the City property or City right-of-way occupied by the Project;
19 do not extend the term of the Agreement; and do not modify the Agreement, including any
20 individual ASB pertaining to a fiscal year (but not the sum of all ASBs collectively), to provide
21 anticipated revenue to any City Agency of one million dollars or more, or require expenditure
22 by any City Agency of ten million dollars, and are necessary and advisable to complete the
23 Project and effectuate the purpose and intent of this Resolution, such determination to be
24 conclusively evidenced by the execution and delivery by the Director of Public Works of any
25 such additions, amendments, or other modifications; and, be it

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

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