

1 [Real Property Lease, Access License and Access Easement - State of California Department
2 of Transportation - Property Near Cesar Chavez and Indiana Streets Islais Creek Motor
3 Coach Operation and Maintenance Facility - \$191,240 Initial Annual Rent]

4 **Resolution authorizing an Airspace Lease for approximately 63,747 square feet of land**
5 **under the Highway 280 freeway structure near Cesar Chavez and Indiana Streets**
6 **(Lease Parcel) for the Islais Creek Motor Coach Operation and Maintenance Facility**
7 **(Bus Facility) with the State of California, acting by and through its Department of**
8 **Transportation (Caltrans), at an initial term of 50 years with two 15-year extension**
9 **options and an initial annual rent of \$191,240 with 3% annual increases and subject to**
10 **certain fair market rent adjustments; authorizing an Indiana Street Access License**
11 **Agreement (License Agreement) for Caltrans access over the Bus Facility from Indiana**
12 **Street to the Lease Parcel during the Airspace Lease term or any later date allowed**
13 **under the License Agreement; authorizing a Cesar Chavez Access Easement**
14 **Agreement (Easement Agreement) for Caltrans access over a 2,098 square foot portion**
15 **of the Bus Facility from Cesar Chavez Street to the Lease Parcel after the License**
16 **Agreement terminates; affirming the Planning Department’s determination under the**
17 **California Environmental Quality Act; and finding the Airspace Lease, Easement**
18 **Agreement and License Agreement are in conformance with the General Plan, and the**
19 **eight priority policies of Planning Code, Section 101.1.**

20
21 WHEREAS, The Board of Supervisors approved the construction of, and acquisition of
22 property for, the Islais Creek Motor Coach Operation and Maintenance Facility at the
23 intersection of Cesar Chavez and Indiana Streets (Bus Facility) under Resolution No. 243-90,
24
25

1 adopted on April 6, 1990, a copy of which is on file with the Clerk of the Board of Supervisors
2 in File No. 84-90-1 (Project Resolution); and

3 WHEREAS, In 1999, the San Francisco Municipal Transportation Agency (SFMTA)
4 began negotiations with the State of California acting by and through its Department of
5 Transportation (Caltrans) to acquire Caltrans property that was comprised of approximately
6 two and one-half acres and needed for the Bus Facility (Combined Caltrans Property); and

7 WHEREAS, The SFMTA and Caltrans did not agree to final acquisition terms when the
8 SFMTA was ready to construct the Bus Facility in 2007, so Caltrans granted the SFMTA a no
9 fee Right of Entry effective as of January 31, 2007 (Right of Entry), to allow the SFMTA to
10 construct portions of the Bus Facility on the Combined Caltrans Property subject to the
11 parties' good faith obligation to negotiate final acquisition terms; and

12 WHEREAS, Caltrans agrees to lease the Lease Parcel, which is comprised of an
13 approximate 63,747 square foot portion of the Combined Caltrans Property, to the City and
14 County of San Francisco (City) under the Airspace Lease, a copy of which is on file with the
15 Clerk of the Board of Supervisors in File No. 171199, for an initial annual rent of \$191,240,
16 with annual 3% increases and subject to a fair market rate adjustment no more than once
17 every ten years after the eleventh lease year; and

18 WHEREAS, The Airspace Lease includes one payment for the SFMTA's use of the
19 Lease Parcel between January 31, 2007, and the Airspace Lease commencement date at a
20 rate of \$.25 per square feet per month with interest calculated at a rate equal to the California
21 Surplus Money Investment Fund (estimated to be \$2,191,080.40 if the commencement date is
22 December 1, 2017), as required by the Right of Entry; and

23 WHEREAS, Under a San Francisco Bay Conservation and Development Commission
24 permit, Caltrans must make approximately 2,591 square feet of the Lease Parcel available to
25 the City at no charge for public access purposes, and the SFMTA commissioned an appraisal

1 in May 2014 to determine the fair market rent for the remainder of the Lease Parcel, a copy of
2 which is on file with the Clerk of the Board of Supervisors in File No. 171199 (2014 Appraisal);
3 and

4 WHEREAS, The 2014 Appraisal determined the fair market rent for the remainder of
5 the Lease Parcel was \$.25/square foot/month; and

6 WHEREAS, The City's Director of Property confirmed the 2014 Appraisal and current
7 San Francisco Port lease rates for similar property are available and relevant data to
8 determine the proposed Airspace Lease rent terms are no greater than Market Rent, as
9 defined in Administrative Code, Section 23.2; and

10 WHEREAS, Caltrans agrees to sell the remaining portion of the Combined Caltrans
11 Property, comprised of approximately 48,177 square feet (Fee Parcel), to the City under an
12 Agreement for Purchase and Sale of Real Estate and Grant of Access Easement and Access
13 License, a copy of which is on file with the Clerk of the Board of Supervisors in File No.
14 171199 (PSA), for \$1,150,000 and interest on such amount calculated at a rate equal to the
15 California Surplus Money Investment Fund from January 31, 2007, through the Fee Parcel
16 closing date (estimated to be \$1,328,184.89 if the closing date is December 1, 2017), as
17 required under the Right of Entry; and

18 WHEREAS, The Fee Parcel is subject to a Caltrans power of termination if it is not
19 used for a public purpose for at least 15 years following the Fee Parcel closing date under
20 Director's Deed for DD-030660-01-02, a copy of which is on file with the Clerk of the Board of
21 Supervisors in File No. 171199 (Director's Deed); and

22 WHEREAS, The SFMTA intends to use the Fee Parcel for the Bus Facility, which is a
23 public purpose; and

24 WHEREAS, The PSA conditions the Fee Parcel sale on the City granting Caltrans a
25 license under the License Agreement, a copy of which is on file with the Clerk of the Board of

1 Supervisors in File No. 171199, for access between the Lease Parcel and Indiana Street over
2 a SFMTA-designated route on the Bus Facility during the term of the Airspace Lease, as may
3 be extended under the terms of the License Agreement; and

4 WHEREAS, The PSA conditions the Fee Parcel sale on the City granting Caltrans a
5 permanent easement under the Easement Agreement, a copy of which is on file with the Clerk
6 of the Board of Supervisors in File No. 171199, for access between the Lease Parcel and
7 Cesar Chavez Street over a 2,098 square foot portion of the Bus Facility after the License
8 Agreement expires; and

9 WHEREAS, Caltrans has an existing access easement for freeway maintenance
10 purposes, which is comprised of approximately 17,197 square feet and located along the
11 northern boundary of Bus Facility and on adjacent City property, a copy of which is on file with
12 the Clerk of the Board of Supervisors in File No. 171199 (1962 Easement), and is reserving a
13 floating access easement over the Fee Parcel under the Director's Deed (Floating Easement);
14 and

15 WHEREAS, Caltrans agrees to terminate the 1962 Easement and the Floating
16 Easement if City enters into the License Agreement and the Easement Agreement, as set
17 forth in the Easement Agreement; and

18 WHEREAS, The SFMTA Board of Directors has the authority to approve the purchase
19 the Fee Parcel under Section 8.A.102 of the City's Charter, but the Board of Supervisors must
20 approve City's execution of the License Agreement and the Easement Agreement that are
21 required as a condition of closing under the PSA; and

22 WHEREAS, The City's Director of Property determined that no fair market value
23 determination is required for the Easement Agreement under Administrative Code, Section
24 23.3 because it is being granted as a condition to Caltrans' sale of the Fee Parcel and in
25

1 consideration of Caltrans terminating the Floating Easement over the Fee Parcel and the
2 1962 Easement over the Bus Facility and adjacent City property; and

3 WHEREAS, The City's Director of Property determined that no Market Rent
4 determination is needed for the License Agreement under Administrative Code Section 23.30
5 because it is being granted as a condition to Caltrans' sale of the Fee Parcel and in
6 consideration of Caltrans terminating the 1962 Easement and the Floating Easement; and

7 WHEREAS, The SFMTA Board of Directors approved the Airspace Lease, the PSA,
8 the License Agreement, and the Easement Agreement under SFMTA Board Resolution No.
9 170919-117, adopted on September 19, 2017, a copy of which is on file with the Clerk of the
10 Board of Supervisors in File No. 171199; and

11 WHEREAS, Under the Project Resolution, the Board of Supervisors adopted the
12 findings in final negative declaration 88.700E for the construction of and acquisition of
13 property for the Facility, which was adopted by the City's Planning Commission on June 20,
14 1989; and

15 WHEREAS, On August 15, 2017, the SFMTA's Environmental Review Team
16 determined no new facts or circumstances require additional environmental review for the
17 Airspace Lease, the License Agreement, or the Easement Agreement under the California
18 Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.), a copy
19 of which determination is on file with the Clerk of the Board of Supervisors in File No.
20 _____, and the Board of Supervisors affirms and relies on such determination; and

21 WHEREAS, Under a General Plan Referral dated October 11, 2017, a copy of which is
22 on file with the Clerk of the Board of Supervisors in File No. 171199, the City's Planning
23 Department determined the Airspace Lease, the License Agreement, and the Easement
24 Agreement are in conformity with the General Plan, and the eight priority policies under
25 Planning Code Section 101.1; now, therefore, be it

1 RESOLVED, That the Board of Supervisors finds the Airspace Lease, the License
2 Agreement, and the Easement Agreement are in conformity with the General Plan, and the
3 eight priority policies under Planning Code, Section 101.1; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the SFMTA Director
5 of Transportation to execute the Airspace Lease and the License Agreement, to exercise the
6 extension options under the Airspace Lease, and to enter into any amendments or
7 modifications to the Airspace Lease or the License Agreement (including without limitation the
8 exhibits) that the SFMTA Director of Transportations determines, in consultation with the City
9 Attorney, are in the best interest of the City, do not materially increase the obligations or
10 liabilities of the City, do not materially decrease the benefits to the City, or are necessary or
11 advisable to effectuate the purposes of the Airspace Lease, the License Agreement, or this
12 resolution, and are in compliance with all applicable laws, including City’s Charter; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors authorizes the SFMTA Director
14 of Transportation and the Director of Property to execute the Easement Agreement and to
15 enter into any amendments or modifications to the Easement Agreement (including without
16 limitation the exhibits) that they determine, in consultation with the City Attorney, are in the
17 best interest of the City, do not materially increase the obligations or liabilities of the City, do
18 not materially decrease the benefits to the City, or are necessary or advisable to effectuate
19 the purposes of the Easement Agreement or this resolution, and are in compliance with all
20 applicable laws, including City’s Charter; and, be it; and, be it

21 FURTHER RESOLVED, That within 30 days of the full execution of the Airspace
22 Lease, the License Agreement, and the Easement Agreement, the SFMTA Director of
23 Transportation shall provide a copy of the executed Airspace Lease, License Agreement, and
24 Easement Agreement to the Clerk of the Board for the Board’s file.