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

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

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

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

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

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

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

WHEREAS, On March 10, 2016, the TJPA Board of Directors adopted Resolution No. 16-006 granting SF Public Works exclusive authority, subject to TJPA Board supervision, to oversee all aspects of construction of the Transbay Project, including, without limitation,
design and project controls related to construction of the Transbay Project for the purpose of
meeting the TJPA Board’s approved program budget and schedule for Phase 1; and

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

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

WHEREAS, The Agreement provides that the City and the TJPA will each mutually
indemnify the other for liabilities, losses, expenses, attorneys’ fees and costs, or claims
(“Claims”) for injury or damages arising out of their performance of the Agreement, but only in
proportion to and to the extent such Claims are caused by or result from the negligent or
intentional acts or omissions by the indemnifying party, and further the City’s obligation to
indemnify the TJPA excludes Claims relating to conditions existing on or before January 4,
2016 or actions that occurred on or before that date; and
WHEREAS, This Board of Supervisors (the “Board”) has previously adopted Resolution No. 166-16, authorizing the City’s execution and delivery of lease revenue commercial paper certificates of participation and direct placement revolving certificates of participation in the maximum amount of $260,000,000 (the “Interim Financing”) to close certain funding shortfalls for the Transbay Project as identified by the Metropolitan Transportation Commission’s (“MTC”) cost and risk review of Phase 1 of the Transbay Project, and that in connection with the Interim Financing, the City will enter into a Cost Oversight Agreement under which representatives of the City, the TJPA, and the MTC will participate in a Cost Review Committee to provide recommendations to help ensure that the Interim Financing is timely repaid and to oversee the proper expenditure by the TJPA of the proceeds of the Interim Financing; and

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

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

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

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

Mayor Lee
BOARD OF SUPERVISORS
FURTHER RESOLVED, That within 30 days of the Agreement being fully executed by all parties, SF Public Works shall provide the final Agreement to the Clerk of the Board for inclusion in the official file.
Resolution retroactively approving a Transbay Project Construction Management and Oversight Services Intergovernmental Agreement with the Transbay Joint Powers Authority, including anticipated compensation to the City, through the Department of Public Works, for performing such services, in the total amount of $4,491,461 for a three-year term commencing January 4, 2016, and mutual indemnity provisions; and authorizing the Deputy Director of the Department of Public Works to execute that Agreement.

June 16, 2016 Budget and Finance Committee - AMENDED

June 16, 2016 Budget and Finance Committee - RECOMMENDED AS AMENDED

July 12, 2016 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 160513

I hereby certify that the foregoing Resolution was ADOPTED on 7/12/2016 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved

7/20/16