

JOINT COMMUNITY FACILITIES AGREEMENT

For

CITY AND COUNTY OF SAN FRANCISCO Community Facilities District No. 2014-1 (Transbay Transit Center)

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this "**Agreement**"), dated as of _____, 2013, is by and between the City and County of San Francisco (the "**City**") and Bay Area Rapid Transit District (the "**Other Local Agency**")

BACKGROUND

A. The City is conducting proceedings for the establishment of a community facilities district, which the parties expect to be named "City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center)" (the "**CFD**"), under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "**Act**");

B. The CFD is proposed to be established for the purpose of financing certain public capital facilities (the "**Facilities**"), as more completely described in Exhibit A to Resolution No. ____ of the Board of Supervisors of the City, which was adopted by the Board of Supervisors on _____, 2014 (the "**Resolution of Intention**").

C. A portion of the Facilities will be owned and operated by the Other Local Agency (the "**Other Local Agency Facilities**"). The Other Local Agency Facilities are described on Exhibit A to this Agreement, which exhibit is incorporated herein.

D. It is anticipated that the City will issue, for and on behalf of the CFD, one or more series of bonds or incur other form(s) of indebtedness (collectively, the "**Bonds**") secured by special taxes to be levied on non-exempt property located within the boundaries of the CFD. Pursuant to Section 53316.2 of the Act, the City may finance through the CFD the Other Local Agency Facilities only pursuant to a joint community facilities agreement between the City and the Other Local Agency.

E. The City and the Other Local Agency have determined that it would be of benefit to the residents of each of their respective jurisdictions to enter into this Agreement to provide for the financing of the Other Local Agency Facilities by the City through the CFD.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Other Local Agency agree as follows:

1. Agreement. This Agreement constitutes a "joint community facilities agreement", within the meaning of Section 53316.2 of the Act pursuant to which the CFD will be authorized to finance the acquisition and construction of the Other Local Agency Facilities.

2. Bond Proceeds. If the CFD is formed, the Board of Supervisors of the City, acting as the legislative body of the CFD, may, in its sole discretion, authorize the issuance of Bonds. The Other Local Agency has no right to compel the formation of the CFD or the issuance of the Bonds.

If and to the extent the Bonds are issued, the City will determine the amount of the Bonds proceeds allocable to contribute toward the cost of the Other Local Agency Facilities (the "Allocated Bonds Proceeds"), and shall cause the deposit of such Allocated Bonds Proceeds into a separate account established by the bond indenture or other similar agreement related to the Bonds (the "Allocated Bonds Proceeds Account"). The City shall be responsible for investment and disbursement of the moneys in the Allocated Bonds Proceeds Account. The City makes no representation that the Allocated Bonds Proceeds will be sufficient to finance the construction of the Other Local Agency Facilities and the City shall have no liability to the Other Local Agency if such Allocated Bonds Proceeds are insufficient for such purpose.

Upon receipt of a disbursement request from the Other Local Agency, pursuant to which the Other Local Agency represents that it has incurred an obligation to expend the requested amount on capital costs of the Other Local Agency Facilities, the City will direct that monies in the Allocated Bonds Proceeds Account be disbursed to or on behalf of and at the direction of the Other Local Agency.

3. Construction of Other Local Agency Facilities. The Other Local Agency covenants to provide for the construction of the Other Local Agency Facilities pursuant to plans and specifications approved by the Other Local Agency. The Other Local Agency covenants that it will construct the Other Local Agency Facilities in compliance with applicable provisions of California and federal law, including but not limited to the Act. The City shall have no responsibility for construction of the Other Local Agency Facilities.

4. Federal Tax Matters. The Other Local Agency hereby makes the following covenants regarding its proposed use of the Allocated Bonds Proceeds and the Other Local Agency Facilities:

a. Expenditure of Allocated Bonds Proceeds. To assist the City in complying with federal tax law matters in connection with the issuance of any Bonds, the Other Local Agency agrees that, at or before the issuance of a Series of Bonds that will finance Other Local Agency Facilities, the Other Local Agency will execute and deliver such certifications and covenants as may be reasonably required for the City's bond counsel to conclude that interest on such Bonds will be excluded from gross income for federal income tax purposes.

b. Private Business Tests; Private Loan Financing Test. The Other Local Agency shall assure that the Allocated Bonds Proceeds are not used so as to cause the Bonds to satisfy the private business tests of section 141(b) of the Internal Revenue

Code of 1986, as amended (the "Code"), or the private loan financing test of section 141(c) of the Code.

c. Ongoing Reporting. To enable the City to comply with the City's arbitrage calculation, reporting and payment obligations with respect to the Bonds, the Other Local Agency agrees to allow the City to inspect the records relating to the investment and expenditure of the Allocated Bonds Proceeds at any reasonable time upon reasonable notice.

5. Ongoing Operation and Maintenance. The City and the Other Local Agency agree that the Other Local Agency shall be solely responsible for the maintenance and operation of the Other Local Agency Facilities.

6. Indemnification.

a. Indemnification by the City. The City shall assume the defense of, indemnify and save harmless, the Other Local Agency, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the City with respect to this Agreement; provided, however, that the City shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

b. Indemnification by the Other Local Agency. The Other Local Agency shall assume the defense of, indemnify and save harmless, the City, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the Other Local Agency with respect to this Agreement, and the design, engineering, construction, operation and maintenance of the Other Local Agency Facilities; provided, however, that the Other Local Agency shall not be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

7. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may not be assigned by either of the parties thereto.

9. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

11. Notices. Under this Agreement, notices shall be sent by first class mail or messenger as follows:

To the City:

Director of the Office of Public Finance
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, California, 94102

To the Other Local Agency:

Bay Area Rapid Transit District
[address to come]

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first-above written.

CITY AND COUNTY OF SAN FRANCISCO

By: _____

Its: _____

BAY AREA RAPID TRANSIT DISTRICT, as
the Other Local Agency

By: _____

Its: _____

APPENDIX A
OTHER LOCAL AGENCY FACILITIES