

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 _____, 2014, is by and between the City and County of San Francisco (the "**City**") and the Transbay Joint Powers Authority (the "**TJPA**")

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 TJPA (the "**Transbay Facilities**"). The Transbay Facilities are (i) the planning, design, engineering and construction of an extension of the Caltrain rail tracks to the Transbay Transit Center (the "**Downtown Rail Extension**") and (ii) the planning, design, engineering and construction of open space on the roof of the Transbay Transit Center (the "**City Park**").

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 (the "**Special Taxes**" or "**Special Tax**"). Pursuant to Section 53316.2 of the Act, the City may finance through the CFD the Transbay Facilities only pursuant to a joint community facilities agreement between the City and the TJPA.

E. The City and the TJPA 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 Transbay 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 TJPA 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 Transbay Facilities.

2. Apportionment.

a. **"Special Tax Proceeds,"** as used in this Section, refers to (i) the Special Tax revenues from a property for which a Tax Commencement Authorization has been issued; (ii) proceeds of Bonds that have already been issued and proceeds of Bonds that are being considered for issuance by the CPC, the Director of Public Finance and the Board of Supervisors; and (ii) the Special Tax revenues from a property in the CFD on which an entitled or approved project is located.

b. Except as set forth below, during such time as the CFD is entitled to levy and collect Special Taxes, issue Bonds and spend Bond proceeds, the City Shall make available approximately 82.6% of the Special Tax Proceeds (the **"82.6% Allocation Percentage"**) to finance the Transbay Facilities.

c. Issuance of Tax Commencement Authorizations and Bonds; Role of IPIC, CPC, Director of Public Finance and Board of Supervisors. The City's Director of Public Finance shall make the final determinations with respect to the following:

(i) The timing and frequency of the issuance of Tax Commencement Authorizations as defined in the Rate and Method of Apportionment of Special Tax for the CFD (the **"RMA"**). The issuance of Tax Commencement Authorizations does not need to be approved by the Board of Supervisors.

(ii) The timing and amount of the issuance of Bonds, subject to approval of the Board of Supervisors.

Prior to making its determinations on these items, the Director of Public Finance shall consider the recommendations of the TJPA, the Interagency Plan Implementation Committee (**"IPIC"**) and the Capital Planning Committee (**"CPC"**).

The IPIC and the CPC shall not recommend, and the Director of Public Finance shall not authorize, the issuance of a Tax Commencement Authorization or recommend to the Board of Supervisors the issuance of Bonds unless (A) the recommendations and determinations are consistent with the allocation percentages determined in accordance with this Agreement and (B) the percentage of current and foreseeable Special Tax Proceeds that will be available to finance the Transbay Projects is consistent with the allocation percentage determined in accordance with this agreement.

c. Budget and Appropriation. The expenditure of Special Tax Proceeds under this Agreement shall be subject to the budget and appropriation process

described in Charter Sections 9.100 ("Budget Process Ordinances"), 9.103 ("Adoption of Appropriation Ordinances") and 3.105 ("Controller; City Services Auditor").

d. Amendment. If changes are planned in one or more of the Transbay Facilities such that the TJPA concludes that 82.6% of the Special Tax Proceeds is no longer necessary to finance one or more of the Transbay Facilities and that it may be appropriate to reallocate the percentage of Special Tax Proceeds that will be available to finance the Facilities, then the parties will meet and confer about the changes and determine whether to recommend to the CPC a change in the percentage of foreseeable Special Tax Proceeds among all of the authorized Facilities. CPC shall recommend to the Board of Supervisors any such change in the 82.6% Allocation Percentage as recommended by the parties. If the changes recommended by the CPC are approved by the Board of Supervisors, then the parties will amend this Agreement to reflect the change.

e. Five-Year Forecasts. The Office of Public Finance will annually prepare a five-year forecast of Special Tax Proceeds and planned Tax Commencement Authorizations. The IPIC will develop a five-year plan for proposed appropriations/expenditures of forecasted Special Tax Proceeds to evaluate and adjust the use of the Special Tax Proceeds to achieve the 82.6% Allocation Percentage to Transbay Facilities, or other subsequently agreed-upon allocation pursuant to Section 2.d, unless the IPIC has otherwise been directed by the parties. The IPIC will recommend this five-year plan to the CPC and the Director of Public Finance.

f. Limitation. The parties acknowledge that the CFD will pledge Special Tax revenues as security for the Bonds issued for the CFD and that the marketability of the Bonds depends upon the clarity of such pledge. Accordingly, the parties agree that nothing in this Section 2 shall be construed to limit the use of Special Tax revenues to pay debt service on Bonds, regardless of the purpose for which the Bond proceeds were spent.

3. 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 TJPA 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 cause the deposit of Bonds proceeds allocable to contribute toward the cost of the Transbay Facilities (the "**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 Transbay Facilities and the City shall have no liability to the TJPA if such Allocated Bonds Proceeds are insufficient for such purpose.

Upon receipt of a disbursement request from the TJPA, pursuant to which the TJPA represents that it has incurred an obligation to expend the requested amount on capital costs of the Transbay 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 TJPA.

4. Construction of Other Local Agency Facilities. The TJPA covenants to provide for the construction of the Transby Facilities pursuant to plans and specifications approved by the

TJPA. The TJPA covenants that it will construct the Transbay 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 Transbay Facilities.

5. Reporting and Communications. The City's Department of Public Works and the TJPA will enter into a written agreement pursuant to which the Department of Public Works will be responsible for providing project management oversight with respect to the design and construction of the Facilities and the use of the Special Tax Proceeds to pay for the construction of the Facilities. The Department of Public Works' project management costs will be funded through the City's portion of the Special Tax Proceeds. The City and the TJPA agree that as long as the design and construction of the Transbay Facilities has not been completed and Special Tax Proceeds are still available to pay for all or a portion of the costs of the design and construction of the Transbay Facilities, the TJPA will provide a written report to the Department of Public Works about the status of the Transbay Facilities and available financing sources to pay for the costs of the Transbay Facilities by no later than 30 days after the last day of each quarter of each fiscal year, and the written report shall be acceptable in form and substance to the Department of Public Works.

6. Federal Tax Matters. The TJPA 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 TJPA agrees that, at or before the issuance of a Series of Bonds that will finance Transbay Facilities, the TJPA 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 TJPA 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 TJPA 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.

7. Ongoing Operation and Maintenance. The City and the TJPA agree that the TJPA shall be solely responsible for the maintenance and operation of the Transbay Facilities.

8. Indemnification.

a. Indemnification by the City. The City shall assume the defense of, indemnify and save harmless, the TJPA, 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 TJPA 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 TJPA with respect to this Agreement, and the design, engineering, construction, operation and maintenance of the Transbay Facilities; provided, however, that the TJPA 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.

9. 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.

10. 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.

11. 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.

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

13. 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
City Hall, Room 336
San Francisco, California, 94102

To the TJPA:

Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

14. 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: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

TRANSBAY JOINT POWERS AUTHORITY

By: _____

Its: _____