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[Option Agreement Amendment for the Purchase and Sale of Real Property - Transbay Joint Powers Authority - Consent to Conditions of Transbay Joint Power Authority's Bridge Loan -\$171,000,000]

Resolution authorizing the Director of Property to execute the First Amendment to Option Agreement for the Purchase and Sale of Real Property between the City, Transbay Joint Powers Authority, and Successor Agency to the Redevelopment Agency of City and County of San Francisco; execute a consent to the conditions of the Transbay Joint Powers Authority's Bridge Loan with a value of \$171,000,000; and acknowledge the Subordination of the Option Agreement for the Purchase and Sale of Real Property for Transbay Parcels F, O, O', and O".

WHEREAS. Any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income (the "Transbay Affordable Housing Obligation"); and

WHEREAS, The City approved, by Ordinance No. 124-05 on June 21, 2005, and Ordinance No. 99-06 on May 9, 2006, copies of which are on file with the Clerk of the Board of Supervisors in File Nos. 050184 and 060347, and incorporated herein by reference, the Redevelopment Plan (the "Plan") for the Transbay Redevelopment Project (the "Project"), which explicitly incorporates the Transbay Affordable Housing Obligation; and

WHEREAS, The Plan provides for the redevelopment of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, containing approximately forty (40) acres of land (the "Project Area"); and

WHEREAS, To implement the Transbay Affordable Housing Obligation and other objectives for the Project Area, the Plan provides that all real property sold, leased or conveyed by the Redevelopment Agency of City and County of San Francisco ("Former Agency") is subject to the provisions of the Plan and contracts, agreements and declarations of restrictions of the Former Agency may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes or any other provision necessary to carry out the Plan; and

WHEREAS, The Former Agency recorded the Transbay Redevelopment Project Area Declaration of Restrictions, which incorporates such matters, against all property in the Project Area (the "Declaration of Restrictions"); and

WHEREAS, Approximately ten (10) acres of land in the Project Area were owned by the State of California ("State"), including the former Transbay Terminal building and its bus access ramps (the "State-Owned Parcels"); and

WHEREAS, The State, acting by and through its Department of Transportation ("Caltrans"), the City, and the Transbay Joint Powers Authority ("TJPA") entered into a Cooperative Agreement on July 11, 2003, (the "Cooperative Agreement"), approved by this Board on July 8, 2003, under Resolution No. 441-03, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 030997, and incorporated herein by reference; and

WHEREAS, Under the Cooperative Agreement, the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions, including the use of the State-Owned Parcels for the construction, or to fund the construction, of the Project; and

WHEREAS, Pursuant to the Cooperative Agreement, the State has a Power of Termination with respect to any State-Owned Parcel transferred to the TJPA or to the City (the "Power of Termination") that permits the State to re-take title to such State-Owned Parcel under certain terms and conditions specified in the Cooperative Agreement; and

WHEREAS, The Cooperative Agreement obligates the State to release such Power of Termination over a State-Owned Parcel if it is sold to a third party and the Gross Sales Proceeds (as defined in the Cooperative Agreement) from such sale are deposited into a Trust Account (as defined in the Cooperative Agreement) and used to pay Capital Costs (as defined in the Cooperative Agreement); and

WHEREAS, Consistent with and also in furtherance of the Cooperative Agreement, the Plan, and the Project, the City, TJPA, and the Former Agency, entered into an Option Agreement for the Purchase and Sale of Real Property ("Option Agreement") on January 31, 2008, approved by this Board on May 9, 2006, under Ordinance No. 99-06, a copy of which is on file with the Clerk of the Board of Supervisors in File No.060347, and incorporated herein by reference; and

WHEREAS, The Option Agreement granted the Former Agency the option ("Option") to take title to certain currently or formerly State-Owned parcels (the "Agency Transfer Parcels") on the satisfaction of certain conditions, and if the Former Agency transferred an Agency Transfer Parcel to a third party, the Former Agency was to place all Gross Sales Proceeds resulting from such transfer into the Trust Account; and

WHEREAS, The City, TJPA, and the Former Agency entered into the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (the "Pledge Agreement"), dated January 31, 2008, approved by this Board on May 9, 2006, under Ordinance No. 99-06, a copy of which is on file with the Clerk of the Board of Supervisors in File No.060347, and incorporated herein by reference, pursuant to which the

parties provided for the irrevocable pledge of Net Tax Increment, as defined in the Pledge Agreement, to TJPA for construction and design of the Transbay Terminal Project; and

WHEREAS, In 2012, the Former Agency was dissolved pursuant to State legislative and case law and the Successor Agency to the Redevelopment Agency of City and County of San Francisco ("Agency") was designated to receive the non-affordable housing assets of the Former Agency and succeeded, by operation of law, to all of the Former Agency's rights, title and interest in the Option Agreement; and

WHEREAS, Under the Option Agreement, the Agency holds an Option to acquire Agency Transfer Parcel F (Block No. 3721, Lot No. 015A), Agency Transfer Parcel O (portion of Block No. 3739, Lot No. 008), Agency Transfer Parcel O' (portion of Block No. 3739, Lot No. 008), and Agency Transfer Parcel O' (portion of Block No. 3739, Lot No. 008) on the terms and conditions of the Option Agreement; and

WHEREAS, Under the Project, the Agency plans to aggregate and prepare Agency Transfer Parcel F for disposition and development as primarily office use, and aggregate and prepare the northern third portion of Agency Transfer Parcel O, O', and O' commonly known as "Redevelopment Block 4" for disposition and residential development that meets the Transbay Affordable Housing Obligation with an applicable number of affordable units, but these planned uses are subject to change; and

WHEREAS, The Option Agreement prevents the Agency from exercising the Option for any Agency Transfer Parcel while it is needed by TJPA for the construction of the Transbay Terminal Project; and

WHEREAS, TJPA is currently using Agency Transfer Parcel F for the construction of new bus ramps and a train box, and Agency Transfer Parcel Parcels O, O', and O' for the temporary terminal facility, and TJPA and the Agency currently expect those uses will continue until late 2016 and late 2017; and

WHEREAS, In January 2010, TJPA entered into a \$171,000,000 loan under the Transportation Infrastructure Finance and Innovation Act (the "TIFIA Loan") to fund a portion of the Transbay Terminal Project costs, which was approved by this Board on November 24, 2009, under Resolution No. 470-09, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 091333, and incorporated herein by reference; and

WHEREAS, TJPA does not except to satisfy all of the disbursement conditions and draw on the TIFIA Loan until late 2015, although the schedule is subject to change; and

WHEREAS, To obtain interim cash flow funding necessary to certify construction contracts and make construction disbursements for the Transbay Terminal Project, pending TJPA's satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA intends to close a bridge loan (the "Bridge Loan") in the amount of the TIFIA loan (\$171,000,000) pursuant to a Credit Agreement in substantially the form on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated herein by reference; and

WHEREAS, As conditions to funding the Bridge Loan under the Credit Agreement, the Bridge Loan lenders require, among other things, the following to occur in order to protect and create certain security interests for the Bridge Loan (the "Security Conditions"): (1) Caltrans shall relinquish its Power of Termination with respect to Agency Transfer Parcel F and Redevelopment Block 4 and any interest Caltrans has in the Gross Sales Proceeds of such parcels (including any requirement that such proceeds be deposited in the Trust Account) and any Gross Sales Proceeds generated from any portion of such parcels, in exchange for a portion of the Bridge Loan proceeds being deposited in the Trust Account at the closing of the Bridge Loan (the "Caltrans Release"); (2) TJPA shall pledge the Net Tax Increment generated by the Agency Transfer Parcels; (3) TJPA shall execute a deed of trust, assignment of leases and rents and security agreement in substantially the form on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated herein by reference, creating a first priority

pledge of, security interest in and lien on all of TJPA's right, title and interest in and to Agency Transfer Parcel F, as well as, among other things, the cash proceeds from the sale, lease or other disposition of Parcel F (the "Deed of Trust"); (4) TJPA shall execute a recordable negative covenant on Parcels O, O', and O" in substantially the form on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated herein by reference, prohibiting TJPA from selling or encumbering them before the Bridge Loan is repaid in full, unless TJPA deposits a specified amount into a lockbox account created under the Credit Agreement (the "Lockbox Account") as collateral for the Bridge Loan (the "Negative Pledge"); and (5) TJPA and the Agency shall subordinate the Option Agreement and the Agency's interest in the Option relative to Parcel F to the Deed of Trust, and the Option Agreement and the Agency's interest in the Subordination of Option Agreement for the Purchase and Sale of Property in substantially the forms on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated herein by reference (the "Subordinations"); and

WHEREAS, The Security Conditions require an amendment to the Option Agreement with respect to the Subordinations by and among City, TJPA, and the Agency in substantially the form on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated herein by reference (the "Option Agreement Amendment"), but City will not be a party to the Credit Agreement, the Deed of Trust, the Negative Pledge, or the Subordinations, provided that City is being asked to acknowledge the Subordinations and the Security Conditions; and

WHEREAS, If Agency wants to exercise its Option to Agency Transfer Parcel F or Redevelopment Block 4 before the Bridge Loan is repaid in full, the Subordinations require that the Agency sell such properties for no less than a minimum price (the "Lien Release Price") established under the Credit Agreement and transfer the resulting Gross Sales

Proceeds into the Lockbox Account, and the Deed of Trust or the Negative Pledge, as applicable, will then be released; and

WHEREAS, TJPA and the Agency have determined that the Lien Release Price is reasonably achievable and that nothing in the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations prevents the Agency from fulfilling the Transbay Affordable Housing Obligation with respect to Agency Transfer Parcel F, Redevelopment Block 4, or any other portion of Agency Transfer Parcels O, O', and O"; and

WHEREAS, Pursuant to the Credit Agreement and the Subordinations, the Deed of Trust and the Negative Pledge will each be released when TJPA repays the Bridge Loan in full, with any remaining funds in the Lockbox Account deposited in the Trust Account, although if Redevelopment Block 4 becomes a separate legal parcel during the term of the Bridge Loan, the Negative Pledge will be released as to Agency Transfer Parcels O, O', and O' and replaced with a deed of trust on Redevelopment Block 4 in substantially the form of the Deed of Trust; and

WHEREAS, The Bridge Loan has a four year term and may be prepaid by TJPA without penalty or premium after the first anniversary of the closing of the Bridge Loan; and

WHEREAS, TJPA expects to satisfy the conditions precedent under the TIFIA Loan, draw on the TIFIA Loan, and prepay in full the Bridge Loan in late 2015, although the schedule is subject to change; and

WHEREAS, TJPA expects that the Agency's Subordinations would be released in late 2015, one to two years before the Agency would otherwise be eligible to exercise its Option to acquire Agency Transfer Parcel F or Redevelopment Block 4, although the schedule is subject to change; and

WHEREAS, In the event of a foreclosure sale or a sale pursuant to any power of sale contained in or under the Deed of Trust on Agency Transfer Parcel F or any future deed of

trust on Redevelopment Block 4 required under the Credit Agreement, the purchaser or purchasers and their successors and assigns, and the property, shall continue to be subject to the Transbay Affordable Housing Obligation and all of the conditions, restrictions and covenants provided in the Declaration of Restrictions, and the Agency retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on all or any portion of Agency Transfer Parcel F or Redevelopment Block 4; and

WHEREAS, Pursuant to the Credit Agreement and the Subordinations, the Bridge
Loan lenders expressly acknowledge that the terms and conditions of the Transbay Affordable
Housing Obligation apply to and pass with Agency Transfer Parcel F and Redevelopment
Block 4, and apply to and bind the successors in interest of any owner of all or any portion of
Agency Transfer Parcel F and Redevelopment Block 4; and that Agency Transfer Parcel F
and Redevelopment Block 4 shall be held, transferred, sold and conveyed, subject to the
Transbay Affordable Housing Obligation and the conditions, restrictions, reservations and
covenants set forth in the Declaration of Restrictions; and

WHEREAS, In order to permit TJPA to offer the Deed of Trust for Agency Transfer Parcel F and the Negative Pledge for Agency Transfer Parcels O, O', and O", and a potential deed of trust for Redevelopment Block 4, as security for the Bridge Loan, and authorize TJPA and the Agency to subordinate to the Deed of Trust and the Negative Pledge, the Option Agreement and the Agency's rights and privileges under the Option relative to Agency Transfer Parcels F, O, O', and O", the City, TJPA, and the Agency desire to enter into the Option Agreement Amendment, have City sign an acknowledgment and consent letter to the terms and conditions of the Bridge Loan in substantially the form on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated herein by reference (the "City Consent Letter"), and acknowledge the Subordinations; and

WHEREAS, The Director of Property believes the Option Agreement Amendment and the Bridge Loan is in the best interests of the taxing entities, including the City and TJPA, to (1) facilitate timely completion of construction of Phase 1 of the Project, which is a public benefit, will help to revitalize the Project Area and stimulate private investment, and is a central part of the Project; (2) facilitate the Agency's timely implementation of the disposition and development of Redevelopment Block 4 and Agency Transfer Parcel F under the Plan; (3) facilitate the Agency's fulfillment of the Transbay Affordable Housing Obligation; and (4) generate timely receipt of property tax revenues by the taxing entities; now, therefore, be it

RESOLVED, In accordance with the recommendations of the Director of Property, the Board of Supervisors hereby approves, and authorizes the Director of Property to execute, the Option Agreement Amendment and the City Consent Letter, and authorizes the Director of Property to acknowledge the two Subordinations; and, be it

FURTHER RESOLVED, This Resolution does not bind the City to make any expenditure, incur any indebtedness, or in any way obligate itself under TJPA's Bridge Loan and related documents; and, be it

FURTHER RESOLVED, This approval by the City of the Bridge Loan is neither an approval of the underlying credit issues of the Transbay Program nor an approval of the financing structure of the Bridge Loan; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Property to execute any additions, amendments or other modifications to the Option Agreement Amendment, the City Consent Letter, and the Subordinations that the Director of Property, in consultation with the Office of the City Attorney, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City or

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materially decrease the benefits to the City, and are in compliance with all applicable laws, including the City's Charter.

RECOMMENDED:

Director of Property



City and County of San Francisco **Tails**

City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

Resolution

File Number:

141155

Date Passed: December 09, 2014

Resolution authorizing the Director of Property to execute the First Amendment to Option Agreement for the Purchase and Sale of Real Property between the City, Transbay Joint Powers Authority, and Successor Agency to the Redevelopment Agency of City and County of San Francisco; execute a consent to the conditions of the Transbay Joint Powers Authority's Bridge Loan with a value of \$171,000,000; and acknowledge the Subordination of the Option Agreement for the Purchase and Sale of Real Property for Transbay Parcels F, O, O', and O".

November 19, 2014 Budget and Finance Committee - RECOMMENDED

December 09, 2014 Board of Supervisors - ADOPTED

Ayes: 10 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 141155

I hereby certify that the foregoing Resolution was ADOPTED on 12/9/2014 by the Board of Supervisors of the City and County of San Francisco.

> Angela Calvillo Clerk of the Board