

**STAFF REPORT FOR CALENDAR ITEM NO.: 4
FOR THE MEETING OF: August 25, 2016**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Interim Executive Director to execute a Third Amendment to both the \$171,000,000 TIFIA Loan Agreement with the U.S. Department of Transportation and the associated Collateral Agency and Account Agreement, allowing the previously approved City Financing to move forward; authorize the Chief Financial Officer to acquire interest rate hedging as required by the TIFIA Lender and, if in the best interest of TJPA, modify or sell the interest rate cap purchased for the Interim Bridge Loan.

SUMMARY:

In 2010, TJPA closed on a loan in a principal amount up to \$171,000,000 for project costs and additional amounts for capitalized interest from the United States Department of Transportation, acting by and through the Federal Highway Administrator (the "TIFIA Lender") under the Transportation Infrastructure Finance and Innovation Act of 1998, §§ 1501 et seq. of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) (the "TIFIA Loan"), to finance a portion of the costs of Phase 1 of the Transbay Transit Center Program (the "Project"). The revenues pledged to repay the TIFIA Loan are primarily the net tax increment revenues generated by the formerly State-owned parcels in the Transbay Redevelopment Area, and future contributions from Alameda-Contra Costa Transit District ("AC Transit") related to use of the new Transit Center (the "Pledged Revenues"). TJPA has not yet drawn on the TIFIA Loan. The TIFIA Loan proceeds are expected to be available for disbursement next month, as TJPA has demonstrated that it has fulfilled each of the conditions precedent to draw on the loan.

In 2015, the TJPA closed on an interim bridge loan with Goldman Sachs Bank and Wells Fargo (the "Interim Bridge Loan"). In connection with the Interim Bridge Loan, TJPA negotiated, approved, and executed two amendments to the TIFIA Loan. TJPA was required to purchase an interest rate cap under the Interim Bridge Loan. When TJPA sold Parcel F earlier this year, TJPA voluntarily prepaid the Interim Bridge Loan in full. Thus, TJPA has no ongoing obligation to maintain the existing interest rate cap.

In April 2016, the TJPA Board approved the terms and conditions for short term financing to be provided by the City and County of San Francisco (the "City Financing"). The City requires a pledge of the Pledged Revenues to secure the City Financing. The TIFIA Loan allows certain forms of "Parity Permitted Debt", which permit debt to be on parity with the TIFIA Loan and allow it to be secured by the Pledged Revenues currently pledged to TIFIA. However, the City Financing does not satisfy the definition of Parity Permitted Debt in the TIFIA Loan. Thus, the TIFIA Lender's consent is necessary in order for the City Financing to be permitted under, and payable on parity with, the TIFIA Loan. The TIFIA Lender is willing to grant such consent pursuant to a third amendment to the TIFIA Loan (the "Third Amendment") and associated requirements. The Third Amendment makes technical modifications to the definitions and provisions of the TIFIA Loan in contemplation of the TIFIA Lender's consent to the City Financing and requires TJPA to acquire an interest rate hedge for the City Financing, among other things. The Third Amendment must be approved before financial close on the City Financing can occur; the City wants financial close to occur as soon as possible.

TIFIA LOAN DETAILS:

In December 2009 the TJPA Board approved the TIFIA Loan, and the loan closed in January 2010. In summary, the terms of the TIFIA Loan are:

- The TIFIA Loan will provide up to \$171 million in proceeds to fund Phase 1. The loan proceeds have not yet been disbursed.

- The interest rate was set upon the execution and delivery of the loan at 4.57%. Interest will be capitalized on the TIFIA Loan until two years after substantial completion of Phase 1.
- TIFIA provides up to 35 years after substantial project completion for loan repayment; the Final Maturity Date in the TJPA's loan is currently the earlier of February 1, 2052 or no later than 35 years after Substantial Completion.
- As noted above, the TIFIA Loan will be repaid with Pledged Revenues comprised of net tax increment revenues and AC Transit passenger facility charges ("PFCs") (or other forms of contributions), plus interest earnings. The net tax increment revenues are generated by the formerly State-owned parcels in the Redevelopment Area, and the PFCs (or other form of contributions) are related to AC Transit's use of the new Transit Center. The net tax increment funds have been pledged to the Transbay Program through the Tax Increment Allocation and Sales Proceeds Pledge Agreement between the City and County of San Francisco, the former San Francisco Redevelopment Agency, and the TJPA dated January 31, 2008. The PFCs have been pledged to the Transbay Program through the Lease and Use Agreement between AC Transit and the TJPA for the Temporary Terminal and new Transit Center dated September 10, 2008.
- When TJPA receives the funds making up the Pledged Revenues, they are (or will be) deposited directly with U.S. Bank National Association (the "Collateral Agent"), under a Collateral Agency and Account Agreement (the "Collateral Agency Agreement"), by and among the TJPA, the TIFIA Lender and the Collateral Agent, for purposes of securing the TJPA's obligations under the TIFIA Loan.
- The TIFIA Loan currently allows certain forms of Parity Permitted Debt.

Disbursement of the TIFIA Loan is subject to several conditions which are summarized as follows:

- Evidence that land sales of formerly State-owned Parcels have closed with gross sales proceeds aggregating not less than \$429 million or an allocation of alternative funding acceptable to the TIFIA Lender.
- Evidence that arranged financing has been secured for the development of all formerly State-owned Parcels that have been sold.
- Updated land sales revenue forecasts, tax increment projections, financing schedules, and project cash flows.
- Evidence that the Project is "fully funded," meaning that there are committed sources of funding available.
- Assignment of an investment grade rating to the TIFIA loan by a Nationally Recognized Rating Agency within 30 days of the requisition for disbursement.

In mid-August, TJPA submitted to TIFIA documentation demonstrating compliance with each of the disbursement conditions. TJPA expects TIFIA to disburse the TIFIA Loan proceeds next month.

AMENDMENT EXPLANATION:

In June 2016 the TJPA Board approved a Phase 1 Program Budget of \$2,259,400,000. The City Financing represents the final piece of funding to complete the Phase 1 funding plan.

The City requires a pledge of the Pledged Revenues to secure the City Financing. While the TIFIA Loan currently allows certain forms of Parity Permitted Debt, the City Financing does not satisfy that existing definition. Thus, the TIFIA Lender's consent is necessary in order for the City Financing to close on

parity with the TIFIA Loan. TIFIA is willing to grant this consent pursuant to a Third Amendment to the TIFIA Loan and other requirements.

TIFIA's proposed form of Third Amendment to the TIFIA Loan is attached. Staff are still negotiating the final form of that agreement but recommend that the TJPA Board authorize the Interim Executive Director to execute a Third Amendment that modifies or adds several terms in the TIFIA Loan Agreement consistent with the following:

- Modifying the application of the Pledged Revenues, to allow for repayment of the City Financing on parity with the TIFIA Loan.
- Moving forward the date for the final TIFIA Loan payment by one year, from February 1, 2052 to February 1, 2051 to coincide with the collection period of net tax increment revenues and striking the provision contemplating that TIFIA Loan repayment could occur up to 35 years after Substantial Completion. This change is not consequential to the TJPA since the pledge of net tax increment to TJPA, which is one of the two primary sources of revenue for repayment of the TIFIA Loan, ends prior to a full 35 years after Substantial Completion.
- Requiring that TJPA hedge the City Financing against rising interest rates (as discussed in more detail below).
- Permitting the liens on the Project created by the City Financing.
- Prohibiting certain changes to the City Financing without the TIFIA Lender's written consent.

Because the application and flow of funds of the Pledged Revenues is being amended, the existing Collateral Agency Agreement under the TIFIA Loan also requires amendment to contemplate the parity payment of and security for the City Financing. The TIFIA Lender is also contemplating the implementation of an intercreditor agreement between the TIFIA Lender and the City to establish their relative rights to the Pledged Revenues and exercise of remedies under their respective loan documents. If the TIFIA Lender determines that an intercreditor agreement is required, TJPA will likely be asked to acknowledge and abide by the terms of the intercreditor agreement.

INTEREST RATE PROTECTION:

The City Financing is based on 1-month LIBOR, plus a margin—the revolving credit facility to be placed with Wells Fargo is at annualized interest of 1-month LIBOR plus 0.56%; the cost of the credit facility to be placed with the Metropolitan Transportation Commission is 1-month LIBOR plus 0.61%. One-month LIBOR as of August 11, 2016 is 0.5077%; thus the relevant rates based on that level would be:

	<u>Taxable</u>
Wells Fargo interest rate	1.068%
MTC interest rate	1.118%

TIFIA is requiring protection against rising interest rates given that the City Financing could be outstanding for 6-10 years. TJPA will enter into interest rate protection against increases in 1-month LIBOR rates likely with two separate caps—one for the portion of the City Financing that is anticipated to be drawn, anticipated to be no more than \$150 million (the amount of the City Financing that is currently expected to be used for the Phase 1 Estimate at Completion), and another—with a higher interest rate—for the portion of the City Financing not currently anticipated to be utilized. TJPA has proposed to TIFIA that we hold an interest rate cap with a notional amount that matches the expected outstanding principal of the City financing based on the forecast draw and repayment profile, based on an all-in rate (1-month LIBOR plus City Financing margin) of approximately 3%. The second cap would more likely be based on an all-in rate of 4-5%.

As discussed above, TJPA currently has an interest rate cap based on 3-month LIBOR for the now redeemed Interim Bridge Loan. Working with our Qualified Independent Representative (QIR), per the TJPA Board Debt Management Policy, TJPA will assess whether it is in the best interest of TJPA to modify the existing cap to meet TIFIA requirements and serve as one of the hedges for the City Financing, or sell the existing cap and competitively procure new caps.

As part of the process of procuring the existing cap in late 2014/early 2015, TJPA entered into International Swaps and Derivatives Association, Inc. ("ISDA") Master Agreements with Goldman Sachs Bank, Bank of America, and Barclays. These Master Agreements set forth all of the general terms and conditions (including, but not limited to, representations, covenants, events of default, termination events and early termination provisions) governing the interest rate cap transaction between the parties. These Master Agreements are still in place and thus, with TIFIA approval, these three counterparties may participate in a procurement process for the new caps TIFIA requires. TJPA may also enter into Master Agreements with additional counterparties, in substantially the same form as the existing Master Agreements. The ISDA Master Agreement is a pre-printed form of agreement which includes a Schedule that allows parties to modify the various sections of the ISDA Master Agreement as well as a Credit Support Annex that provides the terms upon which collateral is pledged to one party from another party. Since the obligations of TJPA will be met by the payment by TJPA of a cap premium at the time of inception of the cap transaction, TJPA will have no obligations to post collateral under the Credit Support Annex. However, the cap provider will have an obligation to post collateral to TJPA under certain specified circumstances, such as a lowering of their credit rating below certain levels, because the cap provider will have potential payment obligations to TJPA over the term of the cap transaction. The ISDA Master Agreement does not contain any commercial terms specific to a particular transaction. The final commercial terms will be included in the Confirmation, which contains information specific to the actual interest rate cap (i.e., the scheduled termination date, the optional termination rights, the scheduled payment dates, the cap rate, the amount of the premium, etc.).

RECOMMENDATION:

Authorize the Interim Executive Director to execute a Third Amendment to both the \$171,000,000 TIFIA Loan Agreement with the U.S. Department of Transportation and the associated Collateral Agency and Account Agreement, both in the forms attached but as may be modified consistent with this staff report and in the best interests of TJPA, allowing the previously approved City Financing to move forward; authorize the Chief Financial Officer to purchase one or more interest rate hedges as required by the TIFIA Lender and, if in the best interest of TJPA, modify or sell the interest rate cap purchased for the Interim Bridge Loan; and authorize both the Interim Executive Director and Chief Financial Officer to make such changes to the documents and take such actions as may be deemed necessary and advisable for execution of the respective Third Amendments and execution of the hedge transactions.

ENCLOSURES:

1. Resolution
2. Draft Third Amendment to TIFIA Loan (currently proposed changes to the current conformed TIFIA Loan shown in redline; further changes would be made by staff consistent with this staff report and in the best interests of TJPA)
3. Draft Third Amendment to Collateral Agency and Account Agreement (currently proposed changes to the current conformed Collateral Account Agreement shown in redline; further changes would be made by staff consistent with this staff report and in the best interests of TJPA)

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The City and County of San Francisco (the “City”), the Alameda-Contra Costa Transit District (“AC Transit”) and the Peninsula Corridor Joint Powers Board-Caltrain have heretofore 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 charges the TJPA with development, design, construction, operation, management, and maintenance of the Transbay Transit Center Program (the “Transbay Program”), which includes: (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including bus ramps and bus storage facility (“Phase 1”); (2) the extension of Caltrain commuter rail service from its current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center (“Phase 2”); and (3) activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area; and

WHEREAS, In January 2010, the TJPA closed on a loan in a principal amount up to \$171,000,000 for project costs and additional amounts for capitalized interest from the United States Department of Transportation (“USDOT”), acting by and through the Federal Highway Administrator (the “TIFIA Lender”) under the Transportation Infrastructure Finance and Innovation Act of 1998, §§ 1501 et seq. of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) (the “TIFIA Loan”), to finance a portion of the costs of Phase 1; and

WHEREAS, The TJPA intends to repay the TIFIA Loan primarily with net tax increment revenues generated by certain formerly State-owned parcels in the Transbay Redevelopment Area and payments received from AC Transit related to AC Transit’s use of the new Transit Center (the “Pledged Revenues”); and

WHEREAS, The TIFIA Loan was executed pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (the “Act”), constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and pursuant to the TIFIA Loan Agreement, by and between the TIFIA Lender and the TJPA; and

WHEREAS, In accordance with the Act, following published notice, a public hearing regarding the TIFIA Loan was conducted by the City on November 24, 2009, and, following such hearing, the City made certain findings under the Act and approved the financing on November 24, 2009; and

WHEREAS, The TJPA Board duly considered the TIFIA Loan and determined there were significant public benefits to the financing and approved such financing on December 10, 2009; and

WHEREAS, The TIFIA Loan was executed on January 25, 2010, and dated as of January 1, 2010, with certain disbursement conditions to be met prior to drawing upon the loan; and

WHEREAS, In 2014, TJPA and the TIFIA Lender negotiated and executed two amendments to the TIFIA Loan that allowed, among other things, TJPA to secure interim short-term bridge financing that allowed Phase 1 to move forward on schedule prior to meeting the disbursement conditions of the TIFIA Loan (the “Interim Bridge Loan”). The Interim Bridge Loan required TJPA to purchase an interest rate cap. Earlier this year, the TJPA voluntarily prepaid in full the Interim Bridge Loan. Thus, the TJPA is no longer obligated to maintain this interest rate cap; and

WHEREAS, The City and County of San Francisco will be providing short term financing (the “City Financing”) for the completion of Phase 1, and requires a parity right to the Pledged Revenues to secure such financing; and

WHEREAS, The TIFIA Lender’s consent is necessary in order for the City Financing to be permitted under, and payable on parity, with the TIFIA Loan, and the TIFIA Lender is willing to grant such consent pursuant to a third amendment to the TIFIA Loan and associated requirements; and

WHEREAS, The TIFIA Lender requires that TJPA hedge the City Financing against rising interest rates; and

WHEREAS, The TIFIA Lender and TJPA have been negotiating the third amendments to the TIFIA Loan and the Collateral Agency and Account Agreement that directs the flow of the Pledged Revenues; now, therefore be it

RESOLVED, That the foregoing recitals are true and correct and the TJPA hereby so finds and determines; and be it further

RESOLVED, That the Board approves and authorizes the Interim Executive Director to execute a Third Amendment to the TIFIA Loan Agreement, by and among the TJPA and the TIFIA Lender, in substantially the form on file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable and approved by the Interim Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Interim Executive Director is hereby authorized and directed to execute, and, if necessary or advisable, the Board Secretary is hereby authorized and directed to attest the final form of the Third Amendment to the TIFIA Loan Agreement for and in the name and on behalf of the TJPA; and be it further

RESOLVED, That the Board approves and authorizes the Interim Executive Director to execute a Third Amendment to the Collateral Agency and Account Agreement, by and among the TJPA, the TIFIA Lender and U.S. Bank National Association, as collateral agent, in substantially the form on file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable and approved by the Interim Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Interim Executive Director is hereby authorized and directed to execute, and, if necessary or advisable, the Board Secretary is hereby authorized and directed to attest the final form of the Third Amendment to the

Collateral Agency and Account Agreement for and in the name and on behalf of the TJPA; and be it further

RESOLVED, That the Board authorizes the Chief Financial Officer to (i) with respect to the existing interest rate cap acquired pursuant to the Interim Bridge Loan, either (a) modify and amend it to meet the TIFIA Lender's requirements, or (b) sell it; (ii) enter into one or more new interest rate cap transactions to hedge all or part of the interest rate costs on the City Financing through a competitive bid or a negotiated process with qualified swap counterparties; (iii) enter into or utilize ISDA documentation (a) similar in substance to the Master Agreements (including the Schedules and Credit Support Annexes thereto) dated as of January 20, 2015 entered into by TJPA and Goldman Sachs Bank USA, Bank of America, N.A., and Barclays Bank PLC, (b) in compliance with the TJPA Debt Management Policy, (c) with such modifications to the documentation that are determined by the Chief Financial Officer to be necessary or desirable for purposes of governing the new interest rate cap transaction or transactions that are entered into by TJPA, (d) with final terms to be determined at the time of execution of the documentation, and (e) the execution of the documentation by the Chief Financial Officer shall be conclusive evidence of approval of any such modifications. The Chief Financial Officer is hereby authorized and directed to execute, and, if necessary or advisable, the Board Secretary is hereby authorized and directed to attest the final form of the interest rate hedge documents (including, but not limited to, ISDA Master Agreements (including the related Schedules and Credit Support Annexes), Confirmations of interest rate cap transactions and any additional documentation relating thereto) for and in the name and on behalf of the TJPA; and be it further

RESOLVED, That the Interim Executive Director, Chief Financial Officer and/or the Board Secretary are hereby authorized and directed to take such other actions and execute and deliver such other documents as may be necessary or desirable to effectuate the provisions of the Third Amendment to the TIFIA Loan Agreement, the Third Amendment to the Collateral Agency and Account Agreement, and related documents including the interest rate hedge documents.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of August 25, 2016.

Secretary, Transbay Joint Powers Authority

UNITED STATES
DEPARTMENT OF TRANSPORTATION

THIRD AMENDMENT TO
TIFIA LOAN AGREEMENT

FOR UP TO \$171,000,000

With

TRANSBAY JOINT POWERS
AUTHORITY

For the

TRANSBAY TRANSIT CENTER PROJECT
(TIFIA 2008-CA-01007A)

DATED AS OF [___], 2016

THIRD AMENDMENT TO TIFIA LOAN AGREEMENT

THIS THIRD AMENDMENT TO TIFIA LOAN AGREEMENT, dated as of [____], 2016 (this "Third Amendment"), amending and supplementing the TIFIA LOAN AGREEMENT, dated as of January 1, 2010, as amended and supplemented by the First Amendment to TIFIA Loan Agreement dated as of May 8, 2014 (the "First Amendment") and by the Second Amendment to TIFIA Loan Agreement dated as of December 16, 2014 (the "Second Amendment") (the TIFIA Loan Agreement as amended and supplemented by the First Amendment and Second Amendment being herein referred to as the "Original Loan Agreement," and the Original Loan Agreement, as amended by this Third Amendment, being herein referred to as the "Agreement"), is entered into by and between TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain), and under California Government Code Section 6500 et seq., with an address of 201 Mission Street, Suite 2100, San Francisco, California 94105 (the "Borrower"), and the UNITED STATES DEPARTMENT OF TRANSPORTATION ("USDOT"), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the "TIFIA Lender").

RECITALS:

WHEREAS, the Congress of the United States of America has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health, and welfare of the people of the United States and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA"), §1501 *et seq.* of Public Law 105-178 (as amended by the Public Law 105-26, Public Law 109-59 and Public Law 112-141) (the "Act"), codified as 23 U.S.C. §601 *et seq.*;

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans;

WHEREAS, the TIFIA Lender previously entered into the TIFIA Loan Agreement, dated as of January 1, 2010, to provide a secured loan to the Borrower pursuant to the Act, in a principal amount up to \$171,000,000 (excluding capitalized interest) for the purpose of funding certain Eligible Project Costs of the Transbay Transit Center Project ("TIFIA Loan");

WHEREAS, the Borrower and the TIFIA Lender have previously agreed to certain amendments as provided in the First Amendment and Second Amendment;

WHEREAS, the Borrower has repaid in full that certain "Interim Financing" contemplated in the Second Amendment;

WHEREAS, contemporaneously with the execution and delivery of this Third Amendment, the Borrower, the TIFIA Lender and the Collateral Agent are entering into that certain Third Amendment to Collateral Agency and Account Agreement (the "CAA Third Amendment"); and

WHEREAS, the Borrower and the TIFIA Lender have agreed to further amend certain terms of the Original Loan Agreement, as provided herein, to address (among other things) (a)

certain requests of the Borrower to facilitate the Borrower's participation in a lease financing of the City and County of San Francisco that will provide additional funding to the Project and (b) the retirement of the Interim Financing.

NOW, THEREFORE, the premises being as stated above, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

ARTICLE I

AUTHORITY; DEFINITIONS

Section 1.1 Authority for Third Amendment. This Third Amendment amends and supplements the Original Loan Agreement and is entered into in accordance with Section 29 of the Original Loan Agreement.

Section 1.2 Definitions. All capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Original Loan Agreement.

Section 1.3 Construction of Certain Terms. All references in the Original Loan Agreement to "this Agreement", or words of similar import and the terms "hereby", "hereof", "hereto", "herein", "hereunder" and any other similar terms as used in the Original Loan Agreement shall be deemed to refer to the Agreement (as defined in the preamble to this Third Amendment). Unless otherwise specified herein, references to sections used in this Third Amendment shall be references to sections in the Agreement. Section 2 (*Interpretation*) of the TIFIA Loan Agreement shall apply to this Third Amendment, except to the extent inconsistent with this Section 1.3.

ARTICLE II

AMENDMENTS

Section 2.1 Amendments to Section 1 (Definitions).

(a) Amendments to Existing Defined Terms.

(i) The definition of "Additional Debt Test" is hereby amended by inserting the word "and" at the end of clause (a) therein.

(ii) The definition of "Amortization Commencement Date" is hereby amended by deleting the text "principal" appearing in clause (i) thereof.

(iii) The definition of "Collateral Agency Agreement" is hereby deleted in its entirety and the following definition is substituted:

“Collateral Agency Agreement” means the Collateral Agency and Account Agreement, dated as of January 1, 2010, as amended and supplemented as of November 15, 2013, as further amended and supplemented as of May 8, 2014, and as further amended and supplemented as of [] , 2016, by and among the Borrower, the TIFIA Lender and U.S. Bank National Association, as successor to Deutsche Bank National Trust Company, as Collateral Agent, as hereinafter further amended and supplemented.

(iv) The definition of “Final Maturity Date” is hereby amended by deleting the text “February 1, 2052” and replacing it with “February 1, 2051.”

(v) The definition of “Forward Looking Debt Service Coverage Ratio” is hereby deleted in its entirety and the following definition is substituted:

“Forward Looking Debt Service Coverage Ratio” means the ratio of projected Pledged Revenues, including the Net Tax Increment Revenues set forth in a certificate or report of the Borrower’s Consultant, to (A) the aggregate scheduled debt service due on the TIFIA Loan, ~~and any Parity Permitted Debt~~ and any Rental Payments during the succeeding 12 month period and each subsequent 12 month period through the final scheduled maturity of the TIFIA Loan is at least equal to 125%, and to (B) the aggregate scheduled debt service due during the succeeding 12 month period and each subsequent 12 month period through the Final Maturity Date on any Subordinated Permitted Debt, the TIFIA Loan, ~~and any Parity Permitted Debt~~ and any Rental Payments is at least equal to 110%.

(vi) The definition of “Parity Permitted Debt” is hereby deleted in its entirety and the following definition is substituted:

“Parity Permitted Debt” means ~~Permitted Debt~~ indebtedness of the Borrower (a) that is secured on parity with the TIFIA Loan and is payable from Pledged Revenues, (b) that either (i) satisfies the Additional Debt Test or (ii) is consented to in writing by the TIFIA Lender, and (c) the proceeds of which are applied solely for Project Costs or Phase 2 costs.

(vii) The definition of “Permitted Debt” is hereby amended by deleting clauses (b) and (c) therein and substituting the following:

“(b) Parity Permitted Debt;

(c) Subordinate Permitted Debt;”

(viii) The definition of “Permitted Liens” is hereby amended by (A) inserting the word “and” at the end of clause (h) therein, (B) deleting clauses (i), (j) and (k) therein and (C) inserting the following new clause (i) therein:

“(i) the Borrower’s Rental Payment obligations under (and as defined in) the Leaseback Lease, for so long as the Leaseback Lease remains in effect.”

(ix) The definition of “Subordinate Permitted Debt” is hereby deleted in its entirety and the following definition is substituted:

“Subordinate Permitted Debt” means ~~Permitted Debt~~ indebtedness of the Borrower (a) that is secured on a subordinate basis to the TIFIA Loan and is payable from Pledged Revenues, (b) that either (i) satisfies the Additional Debt Test or (ii) is consented to in writing by the TIFIA Lender, and (c) the proceeds of which are applied solely for Project Costs or Phase 2 costs.

(b) New Defined Terms. The following new definitions are added to Section 1 of the Original Loan Agreement:

“Additional Rental” means the amounts specified as Additional Rental in Section 3.1(d) of the Leaseback Lease.

“Base Rental” means the amount payable as Base Rental under Section 3.1 of the Leaseback Lease.

“Certificate Purchase Agreements” means (a) that certain Certificate Purchase Agreement, dated as of [____], 2016, by and between the City and Metropolitan Transportation Committee, relating to City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series [____] (Taxable), and (b) that certain Certificate Purchase Agreement, dated as of [____], 2016, by and between the City and Wells Fargo Bank, National Association, relating to City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series A and City and County of San Francisco Lease Revenue Direct Placement Revolving Certificates of Participation, Series A (Taxable).

“City Financing” means the issuance of up to \$260,000,000 of indebtedness by the City pursuant to the City Financing Documents, the proceeds of which financing shall be applied exclusively to the payment of Project Costs.

“City Financing Documents” means (a) each Site Lease, (b) each Trust Agreement, (c) each Certificate Purchase Agreement, (d) each Sublease, (e) the Leaseback Lease, [(f) the Intercreditor Agreement] and (g) any other agreement, contract or understanding entered into from time to time and related to the City Financing, including any agreement relating to the issuance of commercial paper pursuant to either Trust Agreement .

“City Financing Trustee” means U.S. Bank National Association.

“Intercreditor Agreement” means that Intercreditor Agreement, dated as of [____], 2016, by and among, the TIFIA Lender, the Borrower, the City, the Collateral Agent, the City Financing Trustee, the Metropolitan Transportation Committee and Wells Fargo Bank, National Association.]

“Joint Powers Agreement” means that certain Joint Powers Agreement creating the Borrower, dated as of April 4, 2001, among the City, the AC Transit District and the Peninsula Corridor Joint Powers Board – Caltrain.

“Leaseback Lease” means that certain Leaseback Lease, dated as of [____], 2016, by and between the City, as sublessor, and the Borrower, as sublessee.

“Rental Payments” means the Base Rental and Additional Rental payment obligations of the Borrower under the Leaseback Lease.

“Site Leases” means (a) the TJPA Site Lease and (b) that certain Site Lease, dated as of [____], 2016, by and between the City, as lessor, and the City Financing Trustee, as lessee.

“Subleases” means (a) that certain Sublease – TJPA Property, dated as of [____], 2016, by and between the City Financing Trustee, as sublessor, and the City, as sublessee, and (b) that certain Sublease, dated as of [____], 2016, by and between the City Financing Trustee, as sublessor, and the City, as sublessee.

“TJPA Site Lease” means that certain Site Lease – TJPA Property, dated as of [____], 2016, by and between the Borrower, as lessor, and the City Financing Trustee, as lessee.

“Trust Agreements” means (a) that certain Trust Agreement – TJPA Property, dated as of [____], 2016, by and between the City and the City Financing Trustee, relating to City and County of San Francisco Lease Revenue Certificates, and (b) that certain Trust Agreement, dated as of [____], 2016, by and between the City and the City Financing Trustee, relating to City and County of San Francisco Lease Revenue Certificates.

Section 2.2 Amendment to Section 4 (Disbursement Conditions).

(a) Section 4(b)(vi) is hereby amended and restated as follows:

(vi) the Borrower shall have provided evidence satisfactory to the TIFIA Lender that prior to, ~~or simultaneously with,~~ the disbursement of funds, the Permitted Liens securing the Interim Financing shall ~~be or~~ have been released.

(b) Section 4(c) is hereby deleted in its entirety.

Section 2.3 Amendment to Section 6 (Interest). The Default Rate specified in Section 6 is amended by deleting the rate “4.57%” and substituting “[____]%

Section 2.4 Amendments to Section 8 (Security and Priority).

(a) Section 8(e)(iii) is hereby amended and restated as follows:

“(iii) the principal portion of TIFIA Debt Service, the principal portion of the Parity Permitted Debt and Base Rental payment obligations;”

(b) Section 8(e) is further amended by inserting the following new clause (v) and by renumbering current clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) as clauses (vi), (vii), (viii), (ix), (x), (xi) and (xii), respectively:

“(v) the payment of any Additional Rental obligations;”

(c) Section 8(f) is hereby amended by deleting the text “(e)(i) through (x) above” in each of clause (i), clause (ii) and clause (iii) thereof and substituting the text “(e)(i) through (xi) above.”

Section 2.5 Amendment to Section 14 (Representations and Warranties of Borrower).
Section 14(o) is hereby amended and restated as follows:

“(o) The Principal Project Contracts which have been executed and delivered and the City Financing Documents are all in full force and effect, the Borrower is not in default under any of such agreements or contracts, and, to the knowledge of the Borrower, no other party to any of such agreements or contracts is in default thereunder, except as, in either case, could not reasonably be expected to have a Material Adverse Effect.”

Section 2.6 Amendments to Section 16 (Borrower Covenants).

(a) Section 16(a) (Permitted Indebtedness) is hereby amended and restated as follows:

“(a) Permitted Indebtedness. Except for Permitted Debt, the Borrower shall not issue or incur indebtedness of any kind that is secured by Pledged Revenues. Prior to the incurrence of debt for Eligible Project Costs as described in Section (b) or (c) of the definition of Permitted Debt, the Borrower shall provide the TIFIA Lender with satisfactory written evidence that the incurrence of any such indebtedness meets each of the elements of the Additional Debt Test. Any holder of Parity Permitted Debt or Subordinated Permitted Debt must join and agree to be bound by the terms of the Collateral Agency Agreement or enter into a form of intercreditor agreement with terms and provisions acceptable to the TIFIA Lender.”

(b) Section 16(d) (Use of Proceeds and Program Income) is hereby amended and restated as follows:

“(d) Use of Proceeds and Program Income. The Borrower shall use the proceeds of the TIFIA Loan only to pay, or to reimburse the Borrower for, Eligible Project Costs. The Borrower shall use any amounts that it receives in connection with the City Financing solely to pay for Project Costs. The Borrower shall use all income, revenues, rates, fees, charges, rentals, including joint development revenues, or other receipts derived by or related to the operation or ownership of the Project and remaining after the payment of any Pledged Revenues to the Collateral Agent exclusively for transit capital and/or operating expenses and the payment of Rental Payments.”

(c) Section 16(g) (Public Transportation Purposes) is hereby amended and restated as follows:

“(g) Public Transportation Purposes. The Borrower shall lease the Transbay Transit Center solely in connection with the TJPA Site Lease or for public transportation purposes, except for the rooftop park and a certain amount of commercial space therein pursuant to the FTA’s joint development policy, and regulations or circulars, if any, provided that all costs incurred in connection with such leasing exceptions have been excluded from Eligible Project Costs.”

(d) Section 16(h) (Insurance) is hereby amended and restated as follows:

“(h) Insurance. The Borrower shall at all times maintain, or cause to be maintained, insurance on and with respect to the Project, with responsible insurers, as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. The Borrower shall obtain and maintain the insurance required pursuant to any Additional Permitted Debt or City Financing Document to which it is a party. In the event of damage or destruction to, or the taking or condemnation of, all or any part of the Project, the Borrower shall apply the proceeds of any insurance maintained by the Borrower (including self-insurance), any condemnation award and other legally available funds, if any, to the replacement or repair of such portion of the Project that has been damaged, destroyed or taken, unless otherwise expressly agreed to in writing by the TIFIA Lender.

The Borrower shall cause all liability insurance policies that it maintains, other than workers’ compensation insurance, to reflect the TIFIA Lender as an additional insured to the extent of its insurable interest.

All policies or certificates issued to the Borrower by the respective insurers shall provide that such policies or certificates shall not be cancelled or materially changed without the respective insurers endeavoring to provide at least 30 days’ prior written notice to the TIFIA Lender. A certificate of Borrower’s Authorized Representative stating whether all policies or self-insurance required by this Section 16(h) have been obtained and are in full force and effect shall be deposited with the TIFIA Lender on each date that the Borrower delivers a similar certificate pursuant to any Additional Permitted Debt or City Financing Document.

Anything to the contrary in any City Financing Document or in any other agreement related thereto notwithstanding, in no event shall the proceeds of any insurance maintained by the Borrower be used to pay any obligations of the Borrower under the Leaseback Lease or any obligations of the City or of the City Trustee under any City Financing Document without the prior written consent of the TIFIA Lender.”

(e) Section 16(s) (No Prohibited Sale or Assignment) is hereby amended and restated as follows:

“(s) No Prohibited Sale or Assignment. The Borrower shall not sell or assign its rights in and to the Project or its rights and obligations under this Agreement unless such sale or assignment is not expected to result in a Material Adverse Effect and is upon terms and conditions which are acceptable to the TIFIA Lender in its sole discretion; provided, that this Section 16(s) shall not prohibit the Borrower from entering into and performing its obligations under the TJPA Site Lease.”

(f) A new Section 16(y) (City Financing) is hereby added:

“(y) City Financing. Anything to the contrary set forth in this Agreement or the other Project Documents to the contrary notwithstanding:

(i) the Borrower shall not amend, supplement, extend the term of, terminate, waive compliance with or otherwise modify any City Financing Document to

which it is a party without the prior written consent of the TIFIA Lender, which consent may be withheld in the TIFIA Lender's sole and absolute discretion;

(ii) the Borrower shall deliver to the TIFIA Lender promptly (and in any event within three (3) Business Days after the Borrower's receipt thereof) copies of any proposed amendments, executed amendments, proposed agreements, executed agreements, material notices, recordations with the City, and other material documents related to or arising out of the City Financing Documents;

(iii) the Borrower shall deliver to the TIFIA Lender promptly (and in any event within three (3) Business Days after the Borrower's receipt thereof) copies of any draft and final agreements, term sheets, official statements and other material documents related to any indebtedness that may refinance or refund all or any portion of the City Financing;

(iv) the Borrower shall deliver to the TIFIA Lender promptly (and in any event within three (3) Business Days after the Borrower's receipt thereof) copies of any draft and final agreements, term sheets, official statements and other material documents related to any indebtedness that may refinance or refund all or any portion of the City Financing;

(v) the Borrower shall deliver to the TIFIA Lender written notice of the receipt of, and amount of, any proceeds from the City Financing promptly and in any event within three (3) Business Days after the Borrower's receipt of such proceeds;

(vi) the Borrower shall not consent to any assignment by the City Financing Trustee pursuant to Section 7 of the TJPA Site Lease without the prior written consent of the TIFIA Lender;

(vii) the Borrower shall not, without the prior written consent of the TIFIA Lender, add or substitute (A) any property treated as a Component or as Property under (and as defined in) the Leaseback Lease or (B) any property treated as a TJPA Component or as TJPA Property under (and as defined in) the TJPA Site Lease;

(viii) the Borrower shall not, without the prior written consent of the TIFIA Lender, (A) make any addition or improvement to any Component or Property under (and as defined in) the Leaseback Lease, or attach any fixtures or structures to any such Component or Property, including pursuant to Section 7 or Section 8 of the Leaseback Lease or (B) make any addition or improvement to any TJPA Component or TJPA Property under (and as defined in) the TJPA Site Lease, or attach any fixtures or structures to any such TJPA Component or TJPA Property;

(ix) the Borrower shall not release any property included in any Component under (and as defined in) the Leaseback Lease, including pursuant to Section 7 or Section 8 of the Leaseback Lease, without the prior written consent of the TIFIA Lender;

(x) the Borrower shall not (and shall not permit the City to) sublease any Property or any Component thereof under (and as defined in) the Leaseback Lease or grant concessions to others involving the use of any such Property or any Component, whether such concessions purport to convey a leasehold interest or a license to use such Property or Component, in each case without the prior written consent of the TIFIA Lender;

(xi) the Borrower shall not extend, or permit the extension of, the term of the Leaseback Lease beyond the term initially provided therefor without the prior written consent of the TIFIA Lender;

(xii) the Borrower shall not agree to increase the amount paid or payable by the Borrower in connection with the City Financing, whether to the City or to any other Person and whether pursuant to the Leaseback Lease, any other City Financing Document or any other agreement (whether written or oral), without the prior written consent of the TIFIA Lender;

(xiii) the Borrower shall not, without the TIFIA Lender's prior written consent, enter into any other contract, lease, side letter, memorandum of understanding, letter of intent or other agreement or understanding, in each case related to or in connection with the City Financing;

(xiv) the Borrower shall not permit the City to make any changes, repairs or replacements to the Project, including the Transbay Transit Center, without the prior written consent of the TIFIA Lender;

(xv) the Borrower shall not consent to any amendment to the TJPA Sublease pursuant to Section 8.02 of the TJPA Trust Agreement, without the prior written consent of the TIFIA Lender; and

(xvi) if the Borrower's estates under the Leaseback Lease or the TJPA Site Lease or any other lease relating to any Component (as defined in the Leaseback Lease) shall at any time by any reason become vested in one owner, the Leaseback Lease and the estate created thereby shall not be destroyed or terminated by the doctrine of merger without the TIFIA Lender's prior written consent.

(g) A new Section 16(z) (Hedging) is hereby added:

[Hedging covenant to be inserted]

Section 2.7 Amendments to Section 17 (Indemnification). Section 17 (Indemnification) is hereby amended and restated as follows:

“SECTION 17. Indemnification. The Borrower to the extent permitted by law shall indemnify the TIFIA Lender and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, lines, penalties, costs and expenses (including, without limitation, the fees, charges and disbursements of any counsel for any Indemnatee and the costs of

environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of this Agreement, ~~or~~ any of the Project Documents, or any of the City Financing Documents, (ii) the TIFIA Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower upon notice from such Indemnitee shall defend the same and such Indemnitee shall cooperate with the Borrower at the expense of the Borrower in connection therewith. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the Project Documents, any of the City Financing Documents, the TIFIA Loan and the other transactions contemplated hereby and thereby, or the use of the proceeds thereof. AU amounts due to any Indemnitee under this Section shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of this Agreement, ~~or~~ the Project Documents or the City Financing Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.”

Section 2.8 Amendments to Section 20 (Events of Default and Remedies). Clause (x) of Section 20 is hereby amended by deleting the word “or” at the end thereof. Clause (xi) of Section 20 is hereby amended by deleting the period at the end thereof and substituting the text “; or.” Section 20 is hereby further amended by adding the following new clause (xii):

“(xii) City Financing Documents. An event of default shall occur under any of the City Financing Documents.”

Section 2.9 Amendment to Section 36 (Notices; Payment Instructions). Section 36 is hereby amended by deleting the contact details for the TIFIA Lender in their entirety and substituting the following:

“If to the TIFIA Lender: United States Department of Transportation
Build America Bureau
Room W12-464
United States Department of Transportation
1200 New Jersey Avenue, SE

Washington, D.C. 20590
Attention: Director, Office of Credit Programs
Email: BureauOversight@dot.gov”

Section 2.10 Amendment to Exhibit F (TIFIA Debt Service). Exhibit F is hereby deleted in its entirety and a new Exhibit F is added to the Original Loan Agreement in the form attached hereto as Attachment 1.

ARTICLE III

CONDITIONS PRECEDENT

This Third Amendment shall not become effective until the Borrower has satisfied each of the following conditions precedent, as determined by the TIFIA Lender in its sole discretion.

Section 3.1 Receipt of City Financing Documents. The Borrower shall have delivered to the TIFIA Lender certified copies of fully executed and complete versions of each of the City Financing Documents, in form and substance satisfactory to the TIFIA Lender, together with copies of any offering document and cash flow projections prepared in connection with the incurrence of the City Financing.

Section 3.2 Aggregate Amount of City Financing. The Borrower shall have provided to the TIFIA Lender evidence satisfactory to the TIFIA Lender that the aggregate principal amount of the City Financing does not exceed \$160,000,000.

Section 3.3 Legal Opinions.

(a) [Shute Mihaly & Weinberger LLP], as counsel to the Borrower shall have rendered to the TIFIA Lender a legal opinion in form and substance satisfactory to the TIFIA Lender.

(b) [Nixon Peabody], as [special counsel to the Borrower in connection with the City Financing] shall have rendered to the TIFIA Lender a legal opinion in form and substance satisfactory to the TIFIA Lender.

(c) [_____], as counsel to the City shall have rendered to the TIFIA Lender a legal opinion in form and substance satisfactory to the TIFIA Lender.

Section 3.4 Retirement of Interim Financing. The Borrower shall have delivered to the TIFIA Lender evidence, in form and substance satisfactory to the TIFIA Lender, that the Interim Financing has been indefeasibly paid in full and that all Liens securing the Interim Financing have been released, which evidence shall include copies of any payoff letters, UCC-3 termination statements and other relevant documentation.

Section 3.5 Hedging. The Borrower shall have delivered to the TIFIA Lender evidence, in form and substance satisfactory to the TIFIA Lender, that the Borrower has entered into hedging arrangements with respect to its obligations under the City Financing Documents, which arrangements include the following terms and conditions: **[To be inserted]**.

Section 3.6 Officer's Certificate. The Borrower shall have delivered to the TIFIA Lender a certificate executed by the Borrower's Authorized Representative and in form and substance satisfactory to the TIFIA Lender, certifying matters related including, but not limited to, (i) the absence of defaults or Events of Default under any Project Documents or City Financing Documents, (ii) the continued accuracy of the representations and warranties set forth in the TIFIA Loan agreement.

Section 3.7 Other Information. The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items requested by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants that, as of the date of this Amendment:

Section 4.1 Power and Authority. The Borrower has full legal right, power and authority to execute and deliver this Third Amendment, the CAA Third Amendment, and each City Financing Document to which it is a party.

Section 4.2 Due Execution; Enforceability. This Third Amendment, the CAA Third Amendment and each City Financing Document to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower. This Third Amendment constitutes, and the Original Loan Agreement, as amended by this Third Amendment will constitute, the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law). The CAA Third Amendment constitutes, and the Original Collateral Agreement (as defined in the CAA Third Amendment), as amended by the CAA Third Amendment will constitute, the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

Section 4.3 Non-Contravention. The execution and delivery of this Third Amendment, the CAA Third Amendment and each City Financing Document to which the Borrower is a party, the consummation of the transactions contemplated herein and therein and the fulfillment of or compliance with the terms and conditions herein and therein will not (i) conflict with the Joint

Powers Agreement or the bylaws of the Borrower, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

Section 4.4 Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of this Third Amendment, the CAA Third Amendment or any City Financing Document to which the Borrower is a party, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Third Amendment, the CAA Third Amendment or the City Financing Documents to which the Borrower is a party or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of this Third Amendment, the CAA Third Amendment and the City Financing Documents to which the Borrower is a party, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

Section 4.5 No Defaults. At the time of, and immediately after giving effect to, this Third Amendment, there is (i) no Event of Default hereunder or event of default under the Agreement or any Project Document and (ii) no event or condition that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the Agreement or under any Project Document, in each case, shall have occurred and be continuing.

Section 4.6 Original Loan Agreement Representations and Warranties. The representations and warranties of the Borrower set forth in Section 14 of the Original Loan Agreement are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

ARTICLE V

MISCELLANEOUS

Section 5.1 Governing Law. This Third Amendment shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State of California, if and to the extent such federal laws are not applicable.

Section 5.2 Severability. In case any provision in or obligation under this Third Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 5.3 Integration. This Third Amendment and all its terms, conditions and provisions shall be deemed to be part of the Original Loan Agreement. Except as specifically amended and supplemented by this Third Amendment, all other terms, conditions, and provisions of the Original Loan Agreement (i) are unchanged, (ii) shall remain in full force and effect and are hereby ratified and confirmed by each party hereto, as amended hereby, and (iii) shall apply to this Third Amendment, *mutatis mutandis*, as if this Third Amendment was originally part of the Original Loan Agreement. No provision of this Amendment shall be deemed to prejudice any rights or remedies which the TIFIA Lender may have now or in the future under or in connection with the Agreement or any Security Document. In the event of any conflict or inconsistency between this Third Amendment and the Original Loan Agreement, the terms and provisions of this Third Amendment shall govern and prevail to the extent necessary to resolve such conflict or inconsistency. The Original Loan Agreement, as modified by this Third Amendment, constitutes the entire contract between the parties hereto relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 5.4 Successors and Assigns. This Third Amendment shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

Section 5.5 Counterparts. This Third Amendment may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Section 5.6 Effectiveness. This Third Amendment shall be effective as of the date first written above.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be duly executed and delivered by their respective officers that have been duly authorized to do so as of the date above.

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name:
Title: Executive Director

DRAFT

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and through
the Executive Director of the Build America
Bureau

By: _____
Name:
Title:

DRAFT

EXHIBIT F
TIFIA DEBT SERVICE

[To be attached]

DRAFT

Draft: August 12, 2016

THIRD AMENDMENT TO
COLLATERAL AGENCY AND ACCOUNT AGREEMENT

By and Among

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent,

TRANSBAY JOINT POWERS AUTHORITY, as Borrower, and

THE UNITED STATES DEPARTMENT OF
TRANSPORTATION,
acting through the Executive Director of the
Build America Bureau,
as the TIFIA Lender

DATED AS OF [____], 2016

**THIRD AMENDMENT TO
COLLATERAL AGENCY AND ACCOUNT AGREEMENT**

THIS THIRD AMENDMENT TO COLLATERAL AGENCY AND ACCOUNT AGREEMENT, dated as of [___], 2016 (this "Third Amendment"), amending and supplementing the COLLATERAL AGENCY AND ACCOUNT AGREEMENT, dated as of January 1, 2010, by and among U.S. BANK NATIONAL ASSOCIATION, a national banking association, as successor Collateral Agent (the "Collateral Agent"), TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain), and under California Government Code Section 6500 et seq., with an address of 201 Mission Street, Suite 2100, San Francisco, California 94105 (the "Borrower"), and the UNITED STATES DEPARTMENT OF TRANSPORTATION ("USDOT"), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the "TIFIA Lender"), as amended and supplemented by that certain Amendment to Collateral Agency and Account Agreement, dated as of May 8, 2014 (the "First Amendment") and by that certain Second Amendment to Collateral Agency and Account Agreement, dated as of December 1, 2014 (the "Second Amendment") (the Collateral Agency and Account Agreement as amended and supplemented by the First Amendment and Second Amendment being herein referred to as the "Original Collateral Agreement," and the Original Collateral Agreement, as amended by this Third Amendment, being herein referred to as the "Agreement"), is made by and among the Collateral Agent, the Borrower and the TIFIA Lender.

RECITALS:

WHEREAS, the Collateral Agent, the Borrower, and the TIFIA Lender have agreed to amend certain terms of the Original Collateral Agreement as provided herein.

NOW, THEREFORE, the premises being as stated above, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and among the Collateral Agent, the Borrower and the TIFIA Lender as follows:

ARTICLE I

AUTHORITY; DEFINITIONS

Section 1.1 Authority for Amendment. This Third Amendment amends and supplements the Original Collateral Agreement and is entered into in accordance with Section 32 of the Original Collateral Agreement.

Section 1.2 Definitions. All capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Original Collateral Agreement, as amended and supplemented by this Third Amendment.

Section 1.3 Construction of Certain Terms. All references in the Original Collateral Agreement to "this Agreement", or words of similar import and the terms "hereby", "hereof", "hereto", "herein", "hereunder" and any other similar terms as used in the Original Collateral Agreement shall be deemed to refer to the Original Collateral Agreement, as amended and supplemented by this Third Amendment. Unless otherwise specified herein, references to sections used in this Third Amendment shall be references to sections in the Agreement.

ARTICLE II

AMENDMENTS

Section 2.1 Amendments to Definitions.

(a) Amendments to Existing Defined Terms.

(i) The definition of "Amortization Commencement Date" is hereby amended by deleting the text "principal" appearing in clause (i) thereof.

(ii) The definition of "Final Maturity Date" is hereby amended by deleting the text "February 1, 2052" and replacing it with "February 1, 2051."

(iii) The definition of "TIFIA Loan Agreement" is hereby amended and restated as follows:

"TIFIA Loan Agreement" means the TIFIA Loan Agreement, dated as of January 1, 2010, between the Borrower and the TIFIA Lender, as amended and supplemented from time to time, ~~including as amended and supplemented by the First Amendment to TIFIA Loan Agreement.~~

(b) New Defined Terms. The following new definitions are added to Section 1 of the Original Loan Agreement:

"Additional Rental" means the amounts specified as Additional Rental in Section 3.1(d) of the Leaseback Lease.

"Additional Rental Account" means the Additional Rental Account established and maintained pursuant to this Agreement.

"Base Rental" means the amount payable as Base Rental under Section 3.1 of the Leaseback Lease.

"Base Rental Account" means the Base Rental Account established and maintained pursuant to this Agreement.

"Base Rental Payment Date" means each July 1 commencing July 1, 2017, during the term of the Leaseback Lease.

"City Financing" means the issuance of up to \$260,000,000 of indebtedness by the City pursuant to the City Financing Documents, the proceeds of which financing shall be

applied exclusively to the payment of Project Costs (as defined in the TIFIA Loan Agreement).

“**City Financing Documents**” has the meaning set forth in the TIFIA Loan Agreement.

“**Leaseback Lease**” means that certain Leaseback Lease, dated as of [____], 2016, by and between the City, as sublessor, and the Borrower, as sublessee.

“**Loss Proceeds Account**” means the Loss Proceeds Account established and maintained pursuant to this Agreement.

“**Rental Payments**” means the Base Rental and Additional Rental payment obligations of the Borrower under the Leaseback Lease.

(c) Elimination of Existing Defined Terms.

(i) The definition of “First Amendment to TIFIA Loan Agreement” is hereby deleted in its entirety.

Section 2.2 Amendments to Section 4 (Establishment of Accounts). Section 4 is hereby amended and restated as follows:

“4. Establishment of Accounts. There are hereby established in the custody of the Collateral Agent the following accounts to be held and administered by the Collateral Agent for the benefit of the TIFIA Lender, ~~and~~ the holders of other Permitted Debt and, for so long as Rental Obligations remain outstanding, the City, in accordance with this Agreement:

(i) the Net Tax Increment Revenues Account;

(ii) the Annual Capital Contributions Account;

(iii) the TIFIA Debt Service Account;

(iv) the Parity Permitted Debt Service Account;

~~(iv)~~(v) the Base Rental Account;

~~(v)~~(vi) the Debt Service Reserve Account;

(vii) the Parity Permitted Debt Service Reserve Account;

~~(vi)~~(viii) the Additional Rental Account;

~~(vii)~~(ix) ~~the~~ Subordinate Permitted Debt Service Account;

~~(viii)~~(x) ~~the~~ Subordinate Permitted Debt Service Reserve Account;

~~(ix)~~(xi) ~~the~~ Capital Replacement Reserve Account;

~~(x)~~(xii) the Additional Permitted Debt Account; and

~~(xi)~~(xiii) the Surplus Revenue Account.

The Collateral Agent is further directed to establish within the Parity Permitted Debt Service Account, the Parity Permitted Debt Service Reserve Account, the Subordinate Permitted Debt Service Account, the Subordinate Permitted Debt Service Reserve Account and the Additional Permitted Debt Account such subaccounts as may be requested by the Borrower for each series or subseries of Permitted Debt.”

Section 2.3 Amendments to Section 5 (Application of Pledged Revenues and Other Amounts).

(a) Section 5(b) is hereby amended by amending and restating clause “Third” thereunder as follows:

“Third, (i) on each Semi-Annual Payment Date, to the TIFIA Debt Service Account the principal portion of TIFIA Debt Service which the Collateral Agent shall immediately pay to the TIFIA Lender, ~~and~~ (ii) on each Parity Permitted Debt Payment Date, to the Parity Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower) the principal portion of Parity Permitted Debt that is due and payable on such Parity Permitted Debt Payment Date, which the Collateral Agent shall immediately pay to the Parity Permitted Debt Holders, and (iii) on each February 1 and August 1 during the term of the Leaseback Lease, to the Base Rental Account in an amount equal to one half (1/2) of the Base Rental amount that is due and payable during such calendar year, which the Collateral Agent shall immediately pay to the City on the Base Rental Payment Date; provided, that in the event the available moneys are insufficient therefor, the Collateral Agent shall deposit pro rata amounts into the TIFIA Debt Service Account and the Parity Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower) and the Base Rental Account;”

(b) Section 5(b) is hereby further amended inserting the following new clause “Sixth” and by renumbering current clauses “Sixth”, “Seventh”, “Eighth”, “Ninth”, “Tenth”, “Eleventh”, “Twelfth” and “Thirteenth” as clauses “Seventh”, “Eighth”, “Ninth”, “Tenth”, “Eleventh”, “Twelfth”, “Thirteenth” and “Fourteenth”, respectively:

“Sixth, on each Semi-Annual Payment Date, to the Additional Rental Account any amount of Additional Rental then due and payable by the Borrower in accordance with the Leaseback Lease (and not previously paid), which the Collateral Agent shall immediately pay to the City or, at the direction of the City, to the trustee designated under the City Financing Documents;”

(c) Section 5(c)(ii) is hereby amended by deleting the text “Twelfth” therein and substituting the text “Thirteenth”.

(d) Section 5(c)(iii) is hereby amended by deleting the text “Twelfth” therein and substituting the text “Thirteenth”.

(e) Section 5(c) is hereby further amended inserting the following new clause (v) and by renumbering current clauses (v), (vi) and (vii) as clauses (vi), (vii) and (viii), respectively:

“(v) In the event a deficiency exists in the Base Rental Account to pay Base Rental at the times and in the amounts required under the Leaseback Lease, the Collateral Agent shall transfer the amount of such deficiency from amounts on deposit in the Surplus Revenue Account.”

(f) A new Section 5(g) is inserted as follows:

“(g) Upon the payment in full of all obligations owing by the Borrower with respect to Rental Payments, any funds remaining in the Base Rental Account and in the Additional Rental Account shall be transferred by the Collateral Agent to the Net Tax Increment Revenue Account.”

(g) A new Section 5(h) is inserted as follows:

“(h) In the event of damage or destruction to, or the taking or condemnation of, all or any part of the Project, the Borrower shall apply the proceeds of any insurance maintained by the Borrower (including self-insurance), any condemnation award and other legally available funds, if any, to the replacement or repair of such portion of the Project that has been damaged, destroyed or taken; provided, that with the prior written consent of the TIFIA Lender, such proceeds may be applied to the repayment of the Outstanding TIFIA Loan Balance, together with any accrued and unpaid interest thereon, to the repayment of any other Permitted Debt, and to the payment of Rental Payments as and when due under the Leaseback Lease.

Anything to the contrary in this Agreement, the Leaseback Lease, in any other City Financing Document or in any other agreement related to the foregoing notwithstanding, in no event shall the proceeds of any insurance maintained by the Borrower be used to pay any obligations of the Borrower under the Leaseback Lease or any obligations of the City or of the City Trustee under any City Financing Document without the prior written consent of the TIFIA Lender.”

Section 2.4 Amendment to Section 17 (Notices to the Parties). Section 17 is hereby amended by deleting the contact details for the TIFIA Lender and the Borrower in their entirety and substituting the following:

“If to the TIFIA Lender: United States Department of Transportation
Build America Bureau
Room W12-464
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of Credit Programs
Email: BureauOversight@dot.gov

If to the Borrower: Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attention: Executive Director
Email: MZabaneh@transbaycenter.org

Section 2.5 Amendment to Section 32 (Amendment). Section 32 is hereby amended and restated as follows:

“32. Amendment. This Agreement may not be amended except by a written instrument executed by the Collateral Agent, the Borrower, the TIFIA Lender, ~~and~~ each Class of Permitted Debt Holders and, for so long as Rental Obligations remain outstanding, the City.”

Section 2.6 New Section 37 (Third Party Beneficiaries). A new Section 37 is hereby inserted as follows:

“Section 37. Third Party Beneficiaries. The City shall be a third party beneficiary of this Agreement with respect to (a) the provisions hereunder that relate to the Leaseback Lease and the Borrower’s obligations thereunder, including Sections 4 and 5, and (b) Section 32, in each case with power to enforce the same, until the Leaseback Lease has terminated in accordance with its terms.”

Section 2.7 Amendment to Exhibit E (TIFIA Debt Service). Exhibit E is hereby deleted in its entirety and a new Exhibit E is added to the Original Collateral Agreement in the form attached hereto as Attachment 1.

ARTICLE III

MISCELLANEOUS

Section 3.1 Governing Law. This Third Amendment shall be construed in accordance with the laws of the State of California.

Section 3.2 Severability. In case any provision in or obligation under this Third Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 3.3 Integration. This Third Amendment and all its terms, conditions and provisions shall be deemed to be part of the Original Collateral Agreement. Except as specifically amended and supplemented by this Third Amendment, all other terms, conditions, and provisions of the Original Collateral Agreement (i) are unchanged, (ii) shall remain in full force and effect and are hereby ratified and confirmed by each party hereto, as amended hereby, and (iii) shall apply to this Third Amendment, mutatis mutandis, as if this Third Amendment was originally part of the Original Collateral Agreement. In the event of any conflict or inconsistency between this Third Amendment and the Original Collateral Agreement, the

terms and provisions of this Third Amendment shall govern and prevail to the extent necessary to resolve such conflict or inconsistency. The Original Collateral Agreement, as modified by this Third Amendment, constitutes the entire contract between the parties hereto relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 3.4 Successors and Assigns. This Third Amendment shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender. Each Permitted Debt Holder that is not currently a party to the Agreement may become a party to the Agreement and be entitled to the benefits hereof by filing, at the time of the execution and delivery of the Permitted Debt, a written notice to the Collateral Agent that includes the name and address of the Permitted Debt Holder and the documents governing the Permitted Debt, together with written direction from the Borrower of any additional subaccounts required to be established in connection with Section 4 hereof

Section 3.5 Counterparts. This Third Amendment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Section 3.6 Effectiveness. This Third Amendment shall be effective as of the date first written above.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of [____], 2016.

**U.S. BANK NATIONAL ASSOCIATION
as Collateral Agent**

By: _____
Name:
Title:

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name:
Title: Executive Director

**UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and through
the Executive Director of the Build America
Bureau**

By: _____
Name:
Title:

EXHIBIT F
TIFIA DEBT SERVICE

[To be attached]

DRAFT