

**STAFF REPORT FOR CALENDAR ITEM NO.: 10.2
FOR THE MEETING OF: March 8, 2018**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a Fiscal Sponsorship Agreement with the East Cut Community Benefit District (CBD) to act as a fiscal sponsor on behalf of the TJPA for fundraising activities related to the grand opening events at the new transit center.

EXPLANATION:

For the grand opening, TJPA staff is working with its public outreach consultant and various stakeholders to plan several events that reach a broad array of participants—funders, transit riders, neighbors, construction workers, etc. TJPA is seeking corporate and private sponsorship and donations to cover costs associated with these events. TJPA’s ability to solicit sponsorships and donations may be improved if such contributions are tax-deductible. To facilitate receipt of tax-deductible contributions, it is easiest for TJPA to create a tax-exempt charitable organization or enter into a fiscal sponsorship agreement with an existing such organization.

The East Cut CBD (formerly the Greater Rincon Hill CBD) is an existing tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, formed by area property owners and other stakeholders to advance the East Cut neighborhood’s quality of life, enhance its public realm, and reinforce the viability of its economic base. The CBD charges assessments to area property owners (including TJPA) to achieve these goals; a large portion of Salesforce Park operations and maintenance will be funded by these assessments.

The CBD has agreed to serve as a fiscal sponsor for the TJPA for the purpose of collecting funds for activities and events related to the opening of the new transit center. The attached agreement was drafted by legal counsel experienced with this type of agreement. It has a term of one year, and requires the CBD to receive and hold funds on behalf of the TJPA, and disburse funds to TJPA upon TJPA’s request. The CBD will retain 7.5 percent of the contributions as an administrative fee to cover its costs of providing the fiscal sponsor services.

Should excess funds remain following payment for all grand opening activities and events, the TJPA and CBD have agreed that they shall be provided to the Downtown Streets Team (DST), a neighborhood homeless work experience program administered by the CBD. The DST is an innovative program providing pathways to success for homeless individuals through the dignity of employment. Working alongside the East Cut CBD team on beautification projects, DST Team Members are able to develop soft skills for job readiness, as well as assistance with resume building, receive interview clothes and take advantage of case management services. DST is a one-year transitional model, with the ultimate goal of transitioning Team Members into employment and permanent housing. The CBD agrees to restrict any excess funds specifically and only for DST purposes.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute a Fiscal Sponsorship Agreement with the East Cut CBD to act as a fiscal sponsor on behalf of the TJPA for fundraising activities related to the grand opening events at the new transit center.

ENCLOSURES:

1. Resolution
2. Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) desires to conduct fundraising activities for celebratory and recognition events related to the grand opening of the new transit center; and

WHEREAS, The TJPA is soliciting sponsorships and donations from corporations and private entities to cover costs associated with these events; and

WHEREAS, The TJPA's ability to solicit sponsorships and donations may be improved if such contributions are tax-deductible; and

WHEREAS, A fiscal sponsorship agreement between the TJPA and a tax-exempt organization facilitates the receipt of tax-deductible contributions; and

WHEREAS, The East Cut Community Benefit District (CBD) is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and has agreed to act as a fiscal sponsor for the TJPA for fundraising related to the grand opening, for a one year term and an administrative fee equal to 7.5% of contributions; and

WHEREAS, Should excess funds from contributions remain following payment for all grand opening events and activities, the TJPA and the CBD have agreed to direct such funds to the Downtown Streets Team administered by the CBD; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a Fiscal Sponsorship Agreement with the East Cut CBD to act as a fiscal sponsor on behalf of the TJPA for fundraising activities related to the grand opening events at the new transit center; and, be it

FURTHER RESOLVED, That should any excess funds from contributions remain after the costs of the grand opening events are fully-paid, such funds shall be directed for the benefit of the Downtown Streets Team, a neighborhood homeless work experience program administered by the CBD; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to take all actions and execute all documents as he deems reasonably necessary to implement and effectuate the above approval.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 8, 2018.

Secretary, Transbay Joint Powers Authority

FISCAL SPONSORSHIP AGREEMENT

This Agreement dated as of the ____ day of _____, 2018, by and between The East Cut Community Benefit District, a California nonprofit public benefit corporation, EIN 47-4687196 (registered as Greater Rincon Hill Association, the entity's former name), with a principal place of business at 160 Spear Street, Suite 230, San Francisco, California, 94105 (“Non-Profit”), and Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 et seq. with a principal place of business at 201 Mission Street, Suite 2100, San Francisco, California, 94105 (“Agency”) (each a “Party,” and collectively, the “Parties”).

WHEREAS, The East Cut Community Benefit District (“District”), formerly the Greater Rincon Hill Community Benefit District, a property-based business improvement district, was formed to advance quality of life, improve public safety, and enhance the public realm in the District, and to reinforce the viability of the District's economic base; and

WHEREAS, the Nonprofit is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the “Code”); and

WHEREAS, the Nonprofit was formed by area property owners and other stake holders to administer and manage the special assessments the City and County of San Francisco levies on and collects from property owners within the District consistent with the Nonprofit's agreement with the City and County of San Francisco and the District Management Plan (“Management Plan”), and engage in charitable activities consistent the Management Plan (“Exempt Purposes”); and

WHEREAS, the Nonprofit's Exempt Purposes include, but are not limited to, maintenance activities, cleaning activities, and activities that promote public safety, community engagement, and economic vitality within the District; and

WHEREAS, Agency was formed to design, construct, operate and maintain an intermodal transit center and rail extension, and associated facilities, located within the District in downtown San Francisco; and

WHEREAS, Agency is a local government organization that desires to conduct fundraising and other activities for events related to the grand opening of the new transit center; and

WHEREAS, Non-Profit has agreed to act as a fiscal sponsor on behalf of Agency for funds donated to Non-Profit by any entity (“Donor Entity”) that are (1) expressly designated as funds to be distributed to the Agency (2) for the express purpose of funding activities that directly advance the Agency's public purposes and the Non-Profit's Exempt Purposes (the “Contributions”);

NOW, THEREFORE, in consideration of the premises, covenants and conditions herein contained, it is mutually agreed as follows:

1. Non-Profit agrees to receive, hold, and distribute Contributions for the Agency beginning on the date indicated above (the “Effective Date”).

2. If at any time Nonprofit determines, in its exclusive discretion, that it is unable to fulfill its fiscal sponsor obligations under this Agreement due to (a) the volume of Contributions or (b) costs incurred by Non-Profit's performance of the fiscal sponsorship obligations that exceed the administrative fee set forth in Section 5 of this Agreement, it will immediately notify Agency in writing. In this event, the Parties agree to negotiate in good faith a proposed amendment to the Agreement in writing to (a) cap the number of Contributions Nonprofit will process at a mutually agreed upon number of Contribution transactions, and/or (b) increase the administrative fee for the remainder of the term of the Agreement.

3. The term of this Agreement shall be for a one (1) year period beginning on the Effective Date unless otherwise terminated: (a) upon the mutual written agreement of the Parties at any time for any reason; (b) for a material breach of this Agreement if such breach is not cured within ten (10) business days of receiving written notice from the other Party setting forth the material breach; or (c) upon ten (10) days' written notice by Non-Profit or Agency if the Parties are unable to reach an agreement pursuant to Section 2 of this Agreement within thirty (30) days after the notice provided for in that section.

4. Non-Profit will establish and operate a designated account segregated on Non-Profit's books (the "Account") in which the Contributions will be held.

5. To reimburse Nonprofit for its costs of providing services under this Agreement, Non-Profit shall receive an administrative fee equal to 7½ percent (7.5%) of the Contributions, payable on receipt of each Contribution.

6. Non-Profit will timely substantiate Contributions from Donor Entities consistent with the applicable legal requirements and industry standards on Non-Profit letterhead in a form mutually agreeable to both Parties ("Contribution Confirmation Letter"). The Contribution Confirmation Letter will make it clear that the Contribution is a donation to Non-Profit and that such donation is to be used in furtherance of Agency's public purposes and Non-Profit's Exempt Purposes.

7. Agency shall retain authority to manage its day-to-day activities, and to solicit additional donations.

8. Agency may request periodic disbursements from the Contributions. All requests for disbursements must be submitted in writing to Non-Profit, Attn: Andrew Robinson at andrew@theeastcut.org, and/or 160 Spear Street, Suite 230, San Francisco, CA 94105. Requests for disbursements must include a budget setting forth what expenses the disbursement will be used for. Agency shall also provide Non-Profit a summary report of how any such advances are spent after the end of each calendar quarter. These quarterly summaries must be provided to Non-Profit no later than April 10th, July 10th, October 10th and January 10th.

All disbursement requests will be processed by Non-Profit within ten (10) business days of receipt of the request. Non-Profit will make disbursements on behalf of Agency out of the Account only as authorized by this Agreement and consistent with Code Section 501(c)(3). Disbursements will only be made to the extent that the Account contains sufficient funds to cover such disbursement requests.

9. All funds disbursed to Agency will be expended for Agency's public purposes and in furtherance of Non-Profit's Exempt Purposes. Any funds not so expended after the expiration of this Agreement shall be granted to The East Cut CBD for the sole purpose of funding its homeless work experience program with Downtown Streets Team.

10. Agency represents and warrants the following: (a) it is a joint powers authority duly organized, validly existing and in good standing under the laws of the State of California; (b) it has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder; (c) it will comply with all applicable federal, state and local laws in expending any disbursement of Contributions; and (d) it will expend all disbursements of Contributions in furtherance of Agency's public purposes and Non-Profit's Exempt Purposes.

11. Non-Profit represents and warrants the following: (a) it is an organization described in Code Section 501(c)(3) and capable of accepting contributions deductible under Code Section 170; (b) it is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California; and (c) it has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

12. Each Party shall respond in writing to any requests from the other Party for additional information to comply with applicable reporting requirements within five (5) business days upon receipt of same. Upon request, Agency shall promptly release to Non-Profit all records and data necessary for financial audits or verification concerning the disbursed funds. Both Parties shall maintain all records regarding the Contributions and related disbursements for at least three (3) years following the year in which the funds are received.

13. Each Party agrees to indemnify and hold harmless the other Party, its parent, subsidiaries, affiliates, successors and assigns, and their respective directors, officers, employees and agents from and against any claims, losses, judgments, costs or expenses (including reasonable attorneys' fees), incurred by such Party as a result of the other Party's negligence, intentional act in violation of any law, rule or regulation, or breach of a Party's obligations contained in this Agreement.

14. Non-Profit shall be named as Additional Insured on any commercial general liability certificates of insurance that are provided to Agency in connection with events that are paid for all or in part with Contributions.

15. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of California without regard to choice of law principles.

16. Except as specifically provided in this Agreement, this Agreement may not be amended, modified or supplemented except in a writing executed by the Parties hereto.

17. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

18. This Agreement supersedes all prior and contemporaneous understandings and agreements, whether written or oral, between the Parties hereto relating to the transactions provided for herein and therein.

19. This Agreement shall be binding upon and inure to the benefit of the Parties. Neither Party shall assign, delegate or transfer any of its rights or obligations hereunder to any other person without the prior written consent of the other Party.

20. Each of the Parties agrees that it has reviewed and participated in the drafting of this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, each Party has executed this Agreement effective as of the date written above.

THE EAST CUT COMMUNITY BENEFIT DISTRICT

By: _____

Name: Andrew Robinson

Title: Executive Director

TRANSBAY JOINT POWERS AUTHORITY

By: _____

Name: Mark Zabaneh

Title: Executive Director