

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 11
FOR THE MEETING OF: October 14, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve a Quitclaim Agreement to secure the SMCTA's funding of the TJPA's purchase of condominium units at 85 Natoma for the Caltrain Downtown Extension (DTX).

SUMMARY:

On September 9, 2010, the Board approved the TJPA's purchase of Units 6 and 8 in the 10-unit condominium building at 85 Natoma pending the allocation of funding from the San Mateo County Transportation Authority (SMCTA) sales tax funds. 85 Natoma is required to construct the train box and DTX.

As security for granting funds to the TJPA for the purchase of 10 properties, SMCTA has required that the TJPA agree to quitclaim its interest in the property to the funding agency if the Transbay Project is permanently abandoned or not completed by 2040. It was assumed that under this arrangement, the funding agency would sell the property and recoup all or a portion of its grant. Because the TJPA intends to demolish the improvements on 85 Natoma shortly after acquisition, the SMCTA has required as an additional condition of funding the purchase of 85 Natoma that the TJPA also promise to use its best efforts to reimburse the SMCTA for the amount by which the SMCTA grant exceeds the value of the property in the event that the DTX is never completed.

REPORT:

In 1988, the voters of San Mateo County approved Measure A to increase the local sales tax by .5% for transportation improvements. In its Resolution 2001-25, the SMCTA, the agency with jurisdiction over Measure A funds, programmed \$27 million for the Transbay project. In its Resolution 3434, MTC also identifies San Mateo Measure A funds for the Transbay project. The SMCTA's initial allocation of Measure A funds for the Transbay project was \$8.6 million for preliminary engineering design and for Caltrain's design support.

In May 2010, the SMCTA granted \$3,800,000 in Measure A funds to the TJPA for the purchase of 580 Howard #500 for the DTX. That property is scheduled for demolition in Phase 2 of the Transbay Project. The Board approved the TJPA's early acquisition of the property on the ground that the owner demonstrated a hardship. As a condition of the grant, the SMCTA required that the TJPA agree to quitclaim its interest in the property to the SMCTA if the DTX were not built to allow the SMCTA to recoup all or part of its grant.

The Program requires acquisition of the 10-unit condominium building at 85 Natoma Street (the "Property"). The Property is required for construction of the train box and DTX train tunnel, which will run through the property (below the building on the Property) as it expands to six

tracks on the curve into the new Transit Center. A short segment of the train box will be constructed under the building in Phase 1. Accordingly, the Property must be acquired and demolished in Phase 1.

On September 9, 2010, the Board approved Purchase and Sale Agreements for the TJPA's purchase of Condominium units #6 and #8 of the Property. To fund this purchase and the remaining units in the Property, the TJPA intends to use the balance of Measure A funds in the sum of \$12,262,000. If these SMCTA funds were insufficient to purchase all 10 units, the TJPA would request funds from the SFCTA or MTC to complete the purchase of the Property.

On October 7, 2010, the SMCTA Board of Directors approved a grant of \$12,262,000 to the TJPA for acquisition of the Property for the DTX. Because the TJPA intends to demolish the improvements on the Property soon after acquisition, however, the SMCTA was concerned that a mere quitclaim deed to the remaining unimproved land would not provide security for the total amount of SMCTA's grant in the event that the TJPA did not construct the DTX. On this basis, the SMCTA required that the TJPA agree to provide additional security in the form of a promise to use its best efforts to reimburse the SMCTA for the amount by which the SMCTA grant exceeds the fair market value of the Property. The fair market value would be determined by an appraiser who is a Member of the Appraisal Institute (MAI) selected by the TJPA and the SMCTA. The difference in the amount of the grant and the Property's value could be paid in installments and would accrue interest at a rate equal to the average rate of return on SMCTA's investment portfolio, compounded annually until paid.

The conditions that would trigger the conveyance of a quitclaim deed to the property to SMCTA and the duty to reimburse the SMCTA for the amount by which its total grant exceeds the value of the Property would be:

- (a) TJPA abandonment of the entire Transbay Project or the DTX; or
- (b) A realignment of the DTX such that the Property is no longer required for the Project; or
- (c) Unless the DTX is under construction, MTC's revision of the *Transportation 2035 Plan for the San Francisco Bay Area* or the Regional Transit Expansion Program (Resolution 3434) that either eliminates the Transbay Project in its entirety or the DTX; or
- (d) The State of California files written notice of intent to exercise its power of termination to take title to the Transbay Terminal building for failure to construct a facility by the "Project Completion Date," as set forth in the Cooperative Agreement; or
- (e) TJPA ceases construction of the DTX for a period of more than twelve consecutive months for any reason;
- (f) The DTX is not completed by 2040; or

- (g) The occurrence of a condition requiring the TJPA to record a deed conveying its interest in any unit in the Property to another funder.

The likelihood that the TJPA would be required to reimburse the SMCTA under this agreement is remote. First, the probability that any of the triggering conditions listed above will occur is low. Second, in the unlikely event that one of the conditions is triggered, the TJPA need only reimburse the SMCTA for the difference between the SMCTA's grant and the value of the Property. Because the Property will be across Natoma Street from the new Transit Center, and the height limit is 450 feet, the Property will have substantial value for high-rise development. Accordingly, the reimbursement, if required, may be none or a small amount. Third, the TJPA is required only to use its best efforts to reimburse the SMCTA for the difference between the grant and the Property value and to pay only after the TJPA Board of Directors adopts a resolution finding that the TJPA has sufficient funds from a source of revenue that may be lawfully used to make the payment. This should allow the TJPA sufficient flexibility to reimburse the SMCTA in installments and to postpone payment until the TJPA has identified appropriate funds to make the payment.

The SMCTA insisted on the reimbursement condition. Because the SMCTA funds are the only source of money for the acquisition of the Property available at this time, the TJPA would be unable to close on those units on October 20 unless the TJPA agreed to the condition.

RECOMMENDATION:

The Staff recommends that the Board authorize the Executive Director to execute the Quitclaim Agreement with the SMCTA in the form attached to this report and all other documents necessary to implement the Agreement as a condition to receipt of funding from the SMCTA for the purchase of the Property.

ENCLOSURES:

1. Agreement for Quitclaim of Interest, Memorandum of Agreement, and Second Amendment to Funding Agreement
2. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Transit Center Program (Program) includes the new Transbay Transit Center, new elevated Bus Ramps, and the Caltrain Downtown Extension (DTX); and

WHEREAS, In 1988, the voters of San Mateo County approved Measure A to increase the local sales tax by .5% for Caltrain improvements; and

WHEREAS, In its Resolution 2001-25, the San Mateo County Transportation Authority (SMCTA), programmed \$27 million for the DTX; and

WHEREAS, In its Resolution 3434, the Metropolitan Transportation Commission (MTC) also committed Measure A funds to the DTX; and

WHEREAS, The Program requires acquisition of the 10-unit condominium building at 85 Natoma Street (the "Property") for construction of the train box and DTX in Phase 1 of the Program; and

WHEREAS, To fund the purchase of the Property, the TJPA intends to use the balance of Measure A funds in the sum of \$12,262,000; and

WHEREAS, On October 7, 2010, the SMCTA Board of Directors approved a grant of \$12,262,000 of Measure A funds to the TJPA for acquisition of the Property for the DTX; and

WHEREAS, As a condition of the SMCTA grant, the SMCTA required that the TJPA enter into an Agreement for Quitclaim of Interest and related agreements ("Agreement") with the SMCTA under which the TJPA would provide security for the grant in the event that the DTX is not constructed by agreeing to quitclaim the Property to the SMCTA and to use its best efforts to reimburse the SMCTA for the amount by which the SMCTA grant exceeds the fair market value of the Property, if any; and

WHEREAS, Under the Agreement, the fair market value of the Property would be determined by an appraiser who is a Member of the Appraisal Institute (MAI) selected by the TJPA and the SMCTA, the difference in the amount of the grant and the Property's value could be paid in installments, and the outstanding amount would accrue interest at a rate equal to the average rate of return on SMCTA's investment portfolio, compounded annually until paid; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute the Agreement with the SMCTA and all other documents necessary to implement the Agreement as a condition to receipt of funding from the SMCTA for the purchase of the Property.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of October 14, 2010.

Secretary, Transbay Joint Powers Authority

**AGREEMENT FOR QUITCLAIM OF INTEREST IN
85 NATOMA STREET**

The Parties to this Agreement ("Agreement") are the Transbay Joint Powers Authority, a joint powers agency created under California Government Code Sections 6500 et seq. ("TJPA") and the San Mateo County Transportation Authority, an agency created pursuant to California Public Utilities Code Sections 131000 et seq. ("SMCTA") (collectively, "the Parties").

RECITALS

A. The Parties entered into a Funding Agreement dated April 11, 2006 ("Funding Agreement") providing for an allocation of 7.28 Million Dollars to TJPA to fund preliminary engineering costs associated with the proposed extension of the existing Caltrain rail corridor ("Downtown Extension" or "DTX") from its existing terminus at Fourth and Townsend Streets in San Francisco, California to a proposed underground terminus beneath a new Transbay Terminal in San Francisco, California ("Transbay Project"). On April 5, 2010, the Parties entered into a First Amendment to the Funding Agreement by which there was allocated to TJPA an additional Three Million Eight Hundred Thousand Dollars (\$3,800,000) in funding to provide for acquisition of certain improved real property necessary to construction of the DTX, commonly referred to as 580 Howard Street Number 500.

B. Concurrent with execution of this Agreement, the Parties have entered into a second Amendment to the Funding Agreement ("Second Amendment to Funding Agreement") by which there is allocated to TJPA an additional Twelve Million Two Hundred Sixty Two Thousand Dollars (\$12,262,000) in grant funding to provide for acquisition of certain improved real property necessary to construction of the DTX, commonly referred to as 85 Natoma Street ("Property"). The Property is comprised of ten (10) condominium units, nine (9) parking spaces in the 85 Natoma garage deeded to nine (9) of the 85 Natoma condominium units, the easement interests in nine (9) parking spaces in the 85 Natoma garage benefitting nine (9) condominium units in 580 Howard, the easement interests in four (4) parking spaces on the 580 Howard real property accessed through the 85 Natoma garage, and one (1) land parcel ("Land Parcel") comprised of the underlying real estate (each of which is referred to herein as a "Parcel" and collectively as the "Parcels") which shall be acquired from time to time as determined by TJPA. The Parcels are described in Exhibits A1 to A23 attached hereto. Parcels acquired with SMCTA funds are referred to as "SMCTA Funded Parcels."

C. As contemplated in the Second Amendment to Funding Agreement, in part consideration for SMCTA's funding allocation to purchase the SMCTA Funded Parcels, TJPA has agreed, for the protection of SMCTA, upon the occurrence of certain events specified herein and direction from SMCTA, (a) to quitclaim TJPA's interest in each SMCTA Funded Parcel, and (b) to repay the amount by which the amount advanced by SMCTA hereunder exceeds, if any, the fair market value of the SMCTA Funded Parcels. TJPA is also willing to use good faith efforts to arrange for SMCTA's receipt of proportionate ownership of the Property relative to all other funding sources, all as further provided in this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Reconveyance Obligation; Triggering Events.** TJPA hereby agrees that upon the occurrence of a Triggering Event, as defined below, upon the request of SMCTA, TJPA shall convey to SMCTA without further condition or authorization by TJPA's governing body a one hundred percent (100%) undivided interest in each of the SMCTA Funded Parcels in accordance with the terms of this Agreement. TJPA shall convey each of the SMCTA Funded Parcels to SMCTA by quitclaim deed free and clear of all liens, encumbrances, claims, easements, restrictions, covenants and conditions except the following exceptions ("Permitted Exceptions"): (i) the lien of any supplementary taxes; (ii) any real property taxes not yet due; (iii) any leases existing at the time of reconveyance that were previously approved by SMCTA under paragraph 2 of this Agreement; (iv) easements, restrictions and rights of way and other exceptions shown in the title policy obtained by TJPA when it acquires the Property; (v) exceptions shown by any survey approved by SMCTA; and (vi) utility easements imposed as part of the Transbay Project and approved by SMCTA under paragraph 2 of this Agreement. Each of the following events shall constitute a triggering event ("Triggering Event") for purposes of this Agreement:

(a) TJPA abandonment of the DTX component of the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Plan Project ("the Transbay Project") as evidenced by a binding vote of TJPA's Board of Directors, whether in connection with abandonment of the entire Transbay Project, or with abandonment of the DTX component of the Transbay Project; or

(b) A revision of the alignment of the DTX such that the Property no longer is part of the realigned DTX operating corridor or necessary to the construction of the realigned DTX operating corridor; or

(c) Unless the project is under construction, Metropolitan Transportation Commission revision of the *Transportation 2035 Plan for the San Francisco Bay Area* or the Regional Transit Expansion Program (Resolution 3434) that either eliminates the Transbay Project in its entirety or the DTX component of the Transbay Project; or

(d) The State of California files written notice of intent to exercise its power of termination to take title to the Transbay Terminal building for failure to construct a facility by the "Project Completion Date," as set forth in the Cooperative Agreement; or

(e) TJPA ceases construction of the DTX for a period of more than twelve consecutive months for any reason;

(f) The DTX is not completed by 2040; or

(g) The occurrence of an event or condition requiring TJPA to record a deed conveying its interest in any parcel of the Property to any other person providing funding for acquisition of the Property.

This Agreement shall terminate at the completion of construction of the DTX without the occurrence of a Triggering Event. TJPA's conveyance of an interest in the Property to a non-Party following completion of construction of the DTX shall not constitute a Triggering Event.

TJPA shall keep SMCTA informed as to the potential for any Triggering Event arises, and shall provide written notice to SMCTA of the anticipated occurrence of a specific Triggering Event not less than five (5) business days prior to the actual occurrence of such Triggering Event.

2. **Restriction on Development, Transfer and Encumbrances.** From and at all times after the date TJPA acquires the Property, TJPA shall not (a) develop the Property in any manner other than for construction of the DTX and/or pursuant to the Redevelopment Plan for the Transbay Redevelopment Project Area and related documents, the Transit Center District Plan and related documents, and the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Environmental Impact Statement/Environmental Impact Report, each of which as may be amended from time to time subsequent to the date of this Agreement, and/or (b) assign, transfer, pledge as security, hypothecate, or otherwise encumber the SMCTA Funded Parcels without the prior written consent of SMCTA, which will not be unreasonably withheld or delayed if in connection with construction of the DTX.

3. **Repayment Covenant.** Upon the occurrence of a Triggering Event and receipt of a written request from SMCTA, TJPA shall pay to SMCTA in cash or other readily available funds the amount ("Payment Amount") by which the total amount advanced by SMCTA to purchase the SMCTA Funded Parcels exceeds, if any, the fair market value of the SMCTA Funded Parcels as of the date of the Triggering Event in their then present physical condition, based on its highest and best use. The fair market value determination shall be as completed by an MAI appraiser ("Appraiser") with at least fifteen (15) years of experience in the valuation of commercial development properties in the City and County of San Francisco, as designated by SMCTA, and shall be binding upon both parties. If TJPA and SMCTA are unable to agree on an appraiser within sixty (60) days after the date of a Triggering Event, either party may obtain the appointment of an appraiser meeting the qualifications established in this Section 3 by the then Presiding Judge of the Superior Court of the County of San Francisco. The parties shall bear equally the cost of this appraisal. Interest will accrue on the Payment Amount at a rate equal to the lesser of the average rate of return on SMCTA's investment portfolio, compounded annually, as determined by SMCTA, or the maximum amount permitted by law, from the date of the Triggering Event until the date of its payment. TJPA shall use its best efforts to seek and identify funding to pay the Payment Amount, and to effect payment of the Payment Amount at the earliest possible date following the occurrence of the Triggering Event. TJPA shall pay to SMCTA the Payment Amount together with all interest accrued to the date of payment only after the TJPA Board of Directors adopts a resolution finding that TJPA has sufficient funds from a source of revenue that may be lawfully used to make payment.

4. **Escrow; Fees and Costs; Proportional Ownership.** Upon execution of this Agreement, the Parties shall establish an escrow account ("Escrow") with Chicago Title Insurance Company at 338 Market Street, Suite 1300, San Francisco, California or its successor entity ("Escrow Officer") pursuant to escrow instructions ("Escrow Instructions") attached to this Agreement as Exhibit B and incorporated herein by this reference. Pursuant to the Escrow Instructions, TJPA will deliver to the Escrow Officer a Quitclaim Deed in the form attached to

this Agreement as Exhibit C and incorporated herein by this reference for each of the SMCTA Funded Parcels as and when it is acquired. TJPA shall use good faith efforts to arrange for SMCTA to be entitled to receive proportionate ownership of the Property should a Triggering Event occur based on the relation that its total contribution bears to the total amount of funding provided by all other sources for acquisition of the Property. The Escrow Officer shall hold each of the Quitclaim Deeds for the Parcels until the Escrow Officer receives a written instruction from the Executive Director of each of the Parties that a Triggering Event has occurred, and a further direction from the Executive Director of SMCTA to record the Quitclaim Deed. Upon receipt of such instructions establishing a Triggering Event and directive to record, Escrow Officer shall record the Quitclaim Deeds in the Recorders Office of the City and County of San Francisco immediately and without further condition or delay. TJPA shall pay for all annual and closing escrow fees, recording fees and every other closing or other costs and expenses of any kind or nature that are charged by Escrow Officer, the City and County of San Francisco or any other person in connection with the Escrow or recordation of the Memorandum of Agreement or Quitclaim Deeds. Following recording of each Quitclaim Deed, the Escrow Officer shall provide the Parties conformed copies of the Quitclaim Deed, indicating the recording date, document number, and other recording information, and deliver the original deed to the SMCTA.

5. **Pledge of Cooperation**. Upon the occurrence of a Triggering Event, TJPA shall cooperate with the SMCTA and the Escrow Officer and take any and all actions required to effect the conveyance of the SMCTA Funded Parcels to the SMCTA, including, but not limited to, execution, acknowledgment, and delivery of a new Quitclaim Deed(s), if then requested by the SMCTA.

6. **Dispute Resolution**. Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement, which cannot be resolved by the Parties shall be submitted to mediation in the City and County of San Francisco, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until such time as the matter is either resolved or the mediator finds or the Parties agree that mediation should not continue. If the Parties cannot resolve the controversy, claim or dispute through the mediation process described above, the matter shall be settled by arbitration in the City and County of San Francisco, California, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, provided however, that either party may elect in lieu of arbitration, within sixty (60) days after the last meeting date of any mediation, to resolve the dispute through an action brought in the Superior Court of the County of San Francisco, California. The parties agree that the TJPA's obligation to SMCTA is not secured by a mortgage, deed of trust, or estate for years, and therefore that the SMCTA is not barred by any provision of California law, including but not limited to Code of Civil Procedure sections 580a, 580b, or 726, from enforcing its right to compel a sale of the SMCTA Funded Parcels and receive the Payment Amount and/or to obtain any other judgment needed to fully realize the intent of the parties in this Agreement. All direct costs and expenses of any mediation or arbitration shall be borne equally between the Parties. Any costs and expenses incurred by either party other than those for payment of the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party that incurs such expenses, subject to Section 8 below.

7. **Memorandum of Agreement.** Upon the acquisition of each of the SMCTA Funded Parcels, the Parties shall sign and deliver to Escrow Officer for immediate recordation against that parcel a Memorandum of Agreement in the form attached to this Agreement as **Exhibit D.**

8. **Miscellaneous.** This Agreement shall be construed, interpreted and governed by the laws of the State of California without reference to conflict of law principles. This Agreement may be executed in multiple counterparts; each of which shall be deemed an original and all of which together shall constitute one and the same agreement. In the event of a dispute under this Agreement between any of the Parties hereto, the prevailing party shall be entitled to recover reasonable costs and reasonable attorneys' fees from the non-prevailing Parties.

9. **Binding on Successors.** The foregoing provisions shall be binding on TJPA and its successors and assigns, and inure to the benefit of the SMCTA and its respective successors and assigns, until December 31, 2040, unless earlier terminated under Section 1 above.

The Transbay Joint Powers Authority,
a joint powers agency created under
California Government Code Sections 6500
et seq.

Dated: _____, 2010

By: _____
Maria Ayerdi-Kaplan
Executive Director

The San Mateo County Transportation
Authority, an agency created pursuant to
California Public Utilities Code Sections
131000 *et seq.*

Dated: _____, 2010

By: _____
Michael Scanlon
Executive Director

EXHIBIT A1 to A23
REAL PROPERTY DESCRIPTION

EXHIBIT B
ESCROW INSTRUCTIONS

EXHIBIT C

QUITCLAIM DEED WITH CERTIFICATE OF ACCEPTANCE

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Hanson, Bridgett, Marcus, Vlahos & Rudy LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attn: David J. Miller, Esq.

Recording Fee \$0 (Govt Code § 27383)
Document Transfer Tax \$0 (Rev & Tax Code § 11922)

(Space above line for Recorder's use only)

QUITCLAIM DEED

(Assessor's Parcel No. Block _____, Lot _____)

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code Sections 6500 *et seq.*, hereby releases, remises, and forever quitclaims to the SAN MATEO COUNTY TRANSPORTATION AUTHORITY, an agency created pursuant to Public Utilities Code Sections 131000 *et seq.*, without representation or warranty, one hundred percent (100%) of the right, title, and interest the TJPA may have in the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof.

The Transbay Joint Powers Authority, a
joint powers agency created under
California Government Code Sections 6500
et seq.

Dated: _____, 2010

By: _____
Maria Ayerdi-Kaplan
Its: Executive Director

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

On _____, 20__ before me, _____, Notary Public, personally appeared Maria Ayerdi-Kaplan, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(seal)

EXHIBIT A
REAL PROPERTY DESCRIPTION

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in property conveyed by the attached Quitclaim Deed is hereby accepted by virtue of the authority granted by Resolution No. 2010-_____, adopted by the San Mateo County Transportation Authority on _____, 2010, and the San Mateo County Transportation Authority consents to recordation thereof by its duly authorized representative.

SAN MATEO COUNTY
TRANSPORTATION AUTHORITY

Dated: _____, 2010

By: _____
Michael J. Scanlon
Executive Director

EXHIBIT D.

MEMORANDUM OF AGREEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Hanson, Bridgett, Marcus, Vlahos & Rudy LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attn: David J. Miller, Esq.

Recording Fee \$0 (Govt Code § 27383)

(Space above line for Recorder's use only)

MEMORANDUM OF AGREEMENT
San Francisco County

THIS MEMORANDUM OF AGREEMENT (this "**Memorandum**") is entered into as of _____, 2010, by and among **TRANSBAY JOINT POWERS AUTHORITY**, a joint powers agency created under California Government Code Sections 6500 et seq. ("**TJPA**") and the **SAN MATEO COUNTY TRANSPORTATION AUTHORITY**, an agency created pursuant to California Public Utilities Code Sections 131000 et seq. ("**SMCTA**") (collectively, "**the Parties**").

Recitals

A. The Parties entered into a Funding Agreement dated April 11, 2006 ("Funding Agreement") providing for an allocation of 7.28 Million Dollars to TJPA to fund preliminary engineering costs associated with the proposed extension of the existing Caltrain rail corridor ("Downtown Extension" or "DTX") from its existing terminus at Fourth and Townsend Streets in San Francisco, California to a proposed underground terminus beneath a new Transbay Terminal in San Francisco, California ("Transbay Project"). The Parties have entered into a first Amendment to the Funding Agreement by which there was allocated to TJPA an additional Three Million Eight Hundred Thousand Dollars (\$3,800,000) in funding to provide for acquisition of certain improved real property necessary to construction of the DTX, commonly referred to as 580 Howard Street Number 500.

B. The Parties have entered into a second Amendment to the Funding Agreement ("Second Amendment to Funding Agreement") by which there was allocated to TJPA an additional Twelve Million Two Hundred Sixty Two Thousand Dollars (\$12,262,000) in funding to provide for acquisition of certain improved real property necessary to construction of the DTX, as described in Exhibit A1 to A23 attached hereto and commonly referred to as 85 Natoma Street, ("Property"). Parcels that make up the Property and which are acquired with SMCTA funds are referred to as "SMCTA Funded Parcels."

C. In connection with the Second Amendment to Funding Agreement, the Parties have entered into an Agreement for Quitclaim of Interest in 85 Natoma Street ("Quitclaim Agreement"), providing for conveyance of the SMCTA Funded Parcels in certain circumstances. This Memorandum is entered into for the purpose of serving public notice of the existence of the Quitclaim Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Reconveyance Obligation; Triggering Events. TJPA has agreed that upon the occurrence of one of several events specified in the Quitclaim Agreement, TJPA shall convey to SMCTA upon written request a one hundred percent (100%) undivided interest in the SMCTA Funded Parcels in accordance with the terms of the Quitclaim Agreement.

2. Restriction on Transfer and Encumbrances. The Quitclaim Agreement contains a provision whereby TJPA covenants that it shall not assign, transfer, pledge as security, hypothecate, or otherwise encumber the SMCTA Funded Parcels without the prior written consent of SMCTA, which will not be unreasonably withheld or delayed if in connection with construction of the DTX. The Quitclaim Agreement further provides that TJPA shall not develop the Property in any manner other than for construction of the DTX and/or pursuant to the Redevelopment Plan for the Transbay Redevelopment Project Area and related documents, the Transit Center District Plan and related documents, and the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Environmental Impact Statement/Environmental Impact Report, each of which as may be amended from time to time subsequent to the date of the Quitclaim Agreement.

3. Effect of Memorandum. This Memorandum is intended solely to provide record notice of the Quitclaim Agreement and shall not modify or amend any provision of the Quitclaim Agreement. In the event of any conflict or inconsistency between the provisions of the Quitclaim Agreement and the provisions of this Memorandum, the provisions of the Quitclaim Agreement shall control.

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The Transbay Joint Powers Authority,
a joint powers agency created under
California Government Code Sections 6500
et seq.

Dated: _____ 2010

By: _____
Maria Ayerdi-Kaplan
Executive Director

The San Mateo County Transportation
Authority, an agency created pursuant to
California Public Utilities Code Sections
131000 *et seq.*

Dated: _____ 2010

By: _____
Michael Scanlon
Executive Director

SECOND AMENDMENT TO FUNDING AGREEMENT

This Second Amendment to Funding Agreement ("Second Amendment") is entered into this _____, 2010 by and between Transbay Joint Powers Authority, a joint powers agency created under California Government Code Sections 6500 et seq. ("TJPA") and the San Mateo County Transportation Authority, an agency created pursuant to California Public Utilities Code Sections 131000 et seq. ("SMCTA") (collectively, "the Parties").

RECITALS

A. The Parties entered into a Funding Agreement dated April 11, 2006 ("Funding Agreement") providing for an allocation of \$7,280,000 to TJPA to fund preliminary engineering costs associated with the proposed extension of the existing Caltrain rail corridor ("Downtown Extension" or "DTX") from its existing terminus at Fourth and Townsend Streets in San Francisco, California to a proposed underground terminus beneath a new Transbay Terminal in San Francisco, California ("Transbay Project"). On April 5, 2010, the Parties entered into a first Amendment to the Funding Agreement by which there was allocated to TJPA an additional Three Million Eight Hundred Thousand Dollars (\$3,800,000) in funding to provide for acquisition of certain improved real property necessary to construction of the DTX, commonly referred to as 580 Howard Street Number 500.

B. The parties now desire to further amend the Funding Agreement to allocate to TJPA an additional Twelve Million Two Hundred Sixty Two Thousand Dollars (\$12,262,000) in funding to provide for acquisition of certain improved real property necessary to construction of the DTX commonly referred to as 85 Natoma Street ("Property"), subject to and in accordance with the terms of this Second Amendment. The Property is comprised of ten (10) condominium units, nine (9) parking spaces in the 85 Natoma garage deeded to nine (9) of the 85 Natoma condominium units, the easement interests in nine (9) parking spaces in the 85 Natoma garage benefitting nine (9) condominium units in 580 Howard, the easement interests in four (4) parking spaces on the 580 Howard real property accessed through the 85 Natoma garage, and one (1) land parcel comprised of the underlying real estate (each of which is referred to herein as a "Parcel" and collectively as the "Parcels"), each of which shall be acquired from time to time as determined by TJPA. The Parcels are described in Exhibit A1 to A23 attached hereto. Parcels acquired with SMCTA funds are referred to as "SMCTA Funded Parcels."

C. In connection with the proposed additional allocation, TJPA has agreed as a protection for the benefit of SMCTA, upon the occurrence of certain circumstances (a) to quitclaim TJPA's interest in each SMCTA Funded Parcel, and (b) to repay the amount by which the amount advanced by SMCTA hereunder exceeds, if any, the fair market value of the SMCTA Funded Parcels. TJPA is also willing to use good faith efforts to arrange for SMCTA's receipt of proportionate ownership of the Property relative to all other funding sources upon the occurrence of a Triggering Event, all as further provided in the Agreement for Quitclaim of Interest in 85 Natoma Street, ("Quitclaim Agreement") that is attached to this Second Amendment as Exhibit B.

Now, therefore, in consideration of the foregoing, the parties agree as follows:

AGREEMENT

1. Section 1 of the Funding Agreement is hereby amended to increase the allocation to TJPA for the DTX Project by an additional Twelve Million Two Hundred Sixty Two Thousand Dollars (\$12,262,000). The additional allocation shall be for the specific and limited purpose of acquiring each of the Parcels comprising the Property including payment of directly related due diligence and closing costs. SMCTA's total allocation to the DTX Project including this additional allocation will equal Twenty-Three Million Three Hundred Forty Two Thousand Dollars (\$23,342,000).

2. SMCTA shall provide funding for acquisition of each Parcel from time to time upon request of TJPA, subject in each case to final approval of TJPA's request by SMCTA's Executive Director.

3. As a condition to SMCTA's obligation to fund the additional allocation, contemporaneously with execution of this Agreement, the parties will enter into the Quitclaim Agreement, providing for TJPA, upon the occurrence of certain specified events, (a) to quitclaim TJPA's interest in each SMCTA Funded Parcel, and (b) to repay the amount by which the amount advanced by SMCTA hereunder exceeds, if any, the fair market value of the SMCTA Funded Parcels. TJPA will use good faith efforts to arrange for SMCTA's receipt of proportionate ownership of the Property relative to all other funding sources upon the occurrence of a Triggering Event, all as further provided in the Quitclaim Agreement.

4. The Funding Agreement remains in full force and effect in all respects, except as expressly modified by this Second Amendment.

The Transbay Joint Powers Authority,
a joint powers agency created under
California Government Code Sections
6500 *et seq.*

Dated: _____, 2010

By: _____

Maria Ayerdi-Kaplan
Executive Director

The San Mateo County Transportation
Authority, an agency created pursuant to
California Public Utilities Code Sections
131000 *et seq.*

Dated: _____, 2010

By: _____
Michael Scanlon
Executive Director

EXHIBIT B
QUITCLAIM AGREEMENT