

**THIS PRINT COVERS CALENDAR ITEM NO. 10
FOR THE MEETING OF: January 20, 2005**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION: Approving the draft Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement ("Tax Allocation Agreement"), and authorizing the Executive Director to sign a substantially similar document for adoption of the Transbay Redevelopment Plan.

SUMMARY:

- Under the Tax Allocation Agreement the San Francisco Redevelopment Agency ("Agency") and the City and County of San Francisco ("City") promise to pay all "Net Tax Increment," as defined in the Cooperative Agreement, to the Transbay Joint Powers Authority ("Authority") for the forty-five year period that such increment is available under the Transbay Redevelopment Plan.
- The Agency also promises to pay to the Authority the "Gross Sales Proceeds" from the sale of "State-Owned Parcels". The quoted terms are defined in the Cooperative Agreement. Gross Sales Proceeds means the total purchase price without consideration of transfer or other fees. The State-Owned Parcels are the parcels subject to transfer by the State to the City and Authority.
- Under the Community Redevelopment Law, tax increment is paid by the City and County of San Francisco ("City") to the Redevelopment Agency after adoption of the Redevelopment Plan. In the Tax Allocation Agreement the City also promises to take the actions necessary to appropriate funds to pay the Agency's debts. The Agency's promise to pay Net Tax Increment to the Authority is a debt under the Community Redevelopment Law and is subject to the City's promise.
- The Tax Allocation Agreement is necessary partly because the Cooperative Agreement is only between the City, the Authority and the State of California. In the Cooperative Agreement, only the City agreed to pay Net Tax Increment and Gross Sales Proceeds to the Authority. The Agency was not a party. The Tax Allocation Agreement promise to pay Gross Sales Proceeds is also enforced in every deed to a State-Owned Parcel by the State's power of termination. The deeds provide that the State's power to void a sale from the City, Authority or Agency to a third party is relinquished when the Gross Sales Proceeds are provided to the Authority.
- A separate Option Agreement between the City, the Agency and the Authority grants the Agency an option to take title to all State-Owned Parcels, excluding the Transbay Terminal parcels. The Agency will then prepare the parcels for development and sale.
- The term "Net Tax Increment" means all of the tax increment (i.e., increases in tax received by

the City after the Redevelopment Plan is adopted) that is given to the Agency and pledged to the Authority, minus amounts that are required to be set aside for other purposes by statute. The financial plan for the Transbay Terminal Project, as set forth in the Environmental Impact Report/Environmental Impact Statement, and as set forth in the Transbay Redevelopment Plan, estimates the amounts of money that will be available to the Authority as a result of Net Tax Increment.

ENCLOSURES:

1. Resolution
2. Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement

EXPLANATION:

The Tax Allocation Agreement is one of three agreements that serves to bind the Agency to the agreements reached between the City, the Authority and the State in the Cooperative Agreement. It provides a promise (a "pledge") that tax monies provided to the Authority by the City, plus the proceeds of property sales, will be transferred to the Authority. The other two agreements are the Transbay Redevelopment Project Implementation Agreement and the Option Agreement.

All three agreements must be approved first by the Authority. The Agency will approve the documents when it approves the Transbay Redevelopment Plan, scheduled for January 25, 2005. The City's Board of Supervisors must adopt the Redevelopment Plan and approve the documents at the same time. Because there is a possibility that the drafts before the Authority today could change substantially before final adoption by the Board of Supervisors, the Authority's approval resolution is tentative. The Executive Director is only authorized to sign the Tax Allocation Agreement if no substantial changes are made subsequent to today's meeting. If such changes are made, in the opinion of the Executive Director and the General Counsel, adoption of the Redevelopment Plan may need to be delayed while the documents are returned to the Authority for approval. Because the Authority's financial plan is dependent upon the current provisions, additional financial analyses may be needed if they are changed. Authority resolutions for all three agreements are for approval of the document currently on file or a "substantially similar" document.

TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS

Resolution No. _____

WHEREAS, Upon adoption of the Transbay Redevelopment Plan the Redevelopment Agency ("Agency") will begin the process of rehabilitating and revitalizing the Plan area to attract and enhance the ability of the area to attract developers to create a cohesive neighborhood designed around the Transbay Terminal; and

WHEREAS, All tax increment from the State-Owned Parcels must be pledged to the Transbay Terminal Project under the terms of the Cooperative Agreement between the City and County of San Francisco ("City"), the State of California and the Transbay Joint Powers Authority ("Authority"); and

WHEREAS, The Agency has agreed to prepare the vacant State-Owned Parcels within the Redevelopment Plan area for development and sell them to third parties for development consistent with the Redevelopment Plan; and

WHEREAS, The Tax Allocation and Sales Proceeds Pledge Agreement ("Tax Allocation Agreement") between the Authority, the City and the Agency and filed with the Secretary provides that the Authority will receive the gross sales proceeds from sales of the State-Owned Parcels to third-party developers and all net tax increment from those parcels; and

WHEREAS, The Tax Allocation Agreement provides that the City will take necessary measures, including appropriations necessary to fund the pledge of net tax increment to the Authority; now, therefore, be it

RESOLVED, That the Transbay Joint Powers Authority Board authorizes the Executive Director to sign a final Tax Allocation and Sales Proceeds Pledge Agreement that is substantially similar to attached draft; and be it

FURTHER RESOLVED, That if changes are made by the parties to the attached draft document by the Redevelopment Agency Commission or the City's Board of Supervisors, and those changes are substantial in the opinion of the Executive Director and the General Counsel, the Executive Director shall return to the Board of Directors for additional signature authorization and approval.

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

Secretary, Transbay Joint Powers Authority

TRANSBAY REDEVELOPMENT PROJECT
TAX INCREMENT ALLOCATION
AND
SALES PROCEEDS
PLEDGE AGREEMENT

THIS TRANSBAY REDEVELOPMENT PROJECT TAX INCREMENT ALLOCATION PLEDGE AGREEMENT (this “Agreement”) dated as of _____, 2005 is between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county (the “City”), and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (the “Agency”) and the TRANSBAY JOINT POWERS AUTHORITY (the “Authority”) a joint powers authority duly created and organized under California Government Code Sections 6500 *et seq.* Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the Transbay Redevelopment Plan (as described in Paragraph A of the Recitals, below).

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. In accordance with the Community Redevelopment Law of California (Health & Safety Code Section 33000 *et seq.*), the City, acting through its Board of Supervisors, has approved a Redevelopment Plan for the Transbay Redevelopment Project by Ordinance No. ____-04, adopted by the Board on _____, 2005 and approved by the Mayor on _____, 2005. The Redevelopment Plan, as it may be amended, is referred to as the “Transbay Redevelopment Plan.”

B. The Transbay Redevelopment Plan provides for the redevelopment, rehabilitation and revitalization of the area generally bounded by Mission, Main, Second and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land, as more particularly described in such plan (the “Project Area”). The Transbay Redevelopment Plan envisions the Project Area as a mixed-use transit-oriented neighborhood comprised of approximately seven million six hundred thousand (7.6 million) square feet of residential, office, retail, hotel and public space. This development scenario includes up to three thousand four hundred (3,400) units of housing on publicly owned land, including approximately twelve-hundred (1,200) units which would be affordable to very low, low and moderate income households.

C. The Project Area is characterized by ten (10) acres of blighted and underutilized publicly owned land that resulted from demolition of highway ramps damaged in the 1989 Loma Prieta earthquake. Most of this land is vacant and used for parking. The State-Owned Parcels also include the sixty-five (65) year old Transbay Terminal building and its bus access ramps. The Transbay Terminal is obsolete, and underutilized. The Agency has determined that the Transbay Terminal building and ramps are in a blighted physical condition and in need of substantial upgrades or replacement to meet seismic and safety codes. Because these structures occupy several acres of land centrally located in the Project Area, they have a primary impact on physical and economic blighting conditions in the surrounding area. Redevelopment of the

Project Area in accordance with the Transbay Redevelopment Plan will require development of the vacant State-Owned Parcels, replacement of the Transbay Terminal building, and revitalization and improvement of existing buildings, public facilities and infrastructure.

D. The Transbay Redevelopment Plan will provide numerous public benefits for the City and County and its residents. These public benefits include revitalization of the Project Area, which is currently blighted, the provision of substantial new affordable housing, economic development opportunities, and a variety of infrastructure, public facility, and open space improvements.

E. A major goal of the Transbay Redevelopment Plan is to stimulate private investment in the Project Area through elimination of blight, improvement of public facilities and infrastructure, and the establishment of a positive climate for private participation. The Agency intends to finance these improvements using tax increment financing and a range of other potential financing sources, including the potential establishment of a Mello-Roos Community Facilities District (“CFD”) on the State-Owned Parcels.

F. The Authority, the City, and the State of California entered into an agreement dated July 11, 2003 (the “Cooperative Agreement”), in which the State agreed to transfer specified parcels of its vacant and underutilized land, the “State-Owned Parcels”, to the City and Authority, subject to certain restrictions. The State-Owned Parcels are listed in the Cooperative Agreement attached hereto as Exhibit A.

G. The Authority intends to demolish the Transbay Terminal building and its associated ramps and construct a modern publicly-owed multimodal terminal on the same site with an underground train connection to existing rail lines terminating at 4th and Townsend Streets in San Francisco (the “Transbay Terminal Project”). Demolition of these existing structures will provide additional vacant land for development consistent with the Transbay Redevelopment Plan. The Transbay Terminal Project will help to revitalize the Project Area and stimulate private investment by serving as a center of transit, retail, entertainment, and community facilities for the new transit oriented neighborhood. The Transbay Terminal Project is a public benefit and a central part of the Transbay Redevelopment Plan.

H. City or Authority title to the State-Owned Parcels under the Cooperative Agreement is subject to a deed restriction requiring that any such parcel may be sold for development provided that the Gross Sales Proceeds, as defined below, are provided to the Authority to finance development of the Transbay Terminal Project. This deed restriction also applies to the Agency if it acquires any of the State-Owned Parcels from the City or the Authority and is set forth in the Transbay Redevelopment Plan.

I. The Cooperative Agreement further requires that a portion of tax increment revenues attributable to the State-Owned Parcels, the Net Tax Increment, defined below, must be provided to the Authority to finance development of the Transbay Terminal Project. This requirement is set forth in the Transbay Redevelopment Plan.

J. The Transbay Redevelopment Plan authorizes the Agency to provide financial and other assistance to public entities in the development of land, buildings, facilities, structures

and other improvements that benefit the Project Area consistent with the Cooperative Agreement. Investment of Agency revenues in the Transbay Terminal Project, as set forth in the Transbay Redevelopment Plan, will help catalyze the development of underutilized properties such as the State-Owned Parcels, and eliminate their blighting influence on existing buildings in the surrounding area.

K. The City, Agency and Authority have executed an Option Agreement authorizing the Agency to take title to certain State-Owned Parcels, subject to limitations of the Cooperative Agreement but with no payment for land value at the close of escrow. The Option Agreement provides that the Gross Sale Proceeds and all Net Tax Increment (both as defined below) shall be provided to the Authority for the Transbay Terminal Project. The Transbay Redevelopment Project Area Implementation Agreement, between the City, Authority and Agency, (the “Implementation Agreement”) provides that the Authority will develop the Transbay Terminal Project in accordance with the Transbay Redevelopment Plan and is attached hereto as Exhibit C.

L. The City has made the findings required by Section 33445(a) of the Community Redevelopment Law that the Transbay Terminal Project will benefit the Redevelopment Project Area, that no other means of financing the Transbay Terminal Project is available without Agency funding, and that the Agency’s payment of funds will assist in the elimination of blighting conditions.

Pursuant to the authority granted under Article XVI, Section 16 of the California Constitution and Sections 33445, 33670, 33671 and 33675 of the Community Redevelopment Law, the parties now wish to provide for the irrevocable pledge of Net Tax Increment to the Authority for development of the Transbay Terminal Project.

ACCORDINGLY, in consideration of the matters described in the foregoing recitals, the covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City, Authority and Agency agree as follows:

1. Purpose of this Agreement. The purpose of this Agreement is to finance development of the Transbay Terminal Project in accordance with the Transbay Redevelopment Plan, including the Project Area Design for Development, the Cooperative Agreement, the Option Agreement, and the Implementation Agreement (hereafter the “Plan Documents”). The parties agree that the development of the Transbay Terminal Project pursuant to the Plan Documents is in the best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws. The parties intend that all Net Tax Increment and all Gross Sales Proceeds, both as defined below, shall be irrevocably pledged to the Authority, and that the Authority may bond or pledge those revenues as security, use them as cash, loan repayments, or for any other purpose of the Transbay Terminal Project as set forth in the Cooperative Agreement. The Agency and City acknowledge and agree that this Agreement is entered into for their benefit and for the express benefit of the Authority, that Authority is entitled to rely on this Agreement, receive benefits and revenues conferred by this Agreement and to enforce any provision of this Agreement against any party to this Agreement ; provided, however, neither the Agency nor the City shall be liable to the Authority for damages, except as provided in Section 10.2 below.

2. Pledge of Net Tax Increment For Use Of Transbay Joint Powers Authority.

Pursuant to Article XVI, Section 16 of the California Constitution and Sections 33445, 33670, 33671 and 33675 of the Community Redevelopment Law, the Agency and City agree that all property tax increment revenues attributable to parcels or portions thereof acquired by the City or the Authority from the State of California pursuant to the Cooperative Agreement (“Net Tax Increment”), and any interest thereon, are hereby irrevocably pledged to the Authority for costs associated with construction and design of the Transbay Terminal Project, and further agree that such revenues shall not be subject to any other indebtedness whether from the Transbay Redevelopment Plan or any other City or Agency obligation. As used in this Agreement, the term “Net Tax Increment” means all property tax increment revenues attributable to the State-Owned Parcels allocated to and received by Agency, and pledged as indebtedness to Authority, but specifically excluding therefrom the following: (i) charges for County administrative charges, fees, or costs; (ii) the portion of the tax increment revenues that Agency is required by law to set-aside in Agency’s Affordable Housing Fund, pursuant to the Community Redevelopment Law; (iii) a portion of the tax increment revenues equal to the percentage of such revenue that Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; (iv) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate Agency to pay from time to time in the future, including, for example, any payments which Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 *et seq.* of the Community Redevelopment Law. Unless terminated as set forth in this Agreement, the City and Agency agree that their irrevocable pledge of Net Tax Increment shall remain in effect for forty-five years (45) years after the effective date of the ordinance adopting the Transbay Redevelopment Plan.

3. Pledge of Gross Sales Proceeds for Use of Transbay Joint Powers Authority.

Pursuant to Article XVI, Section 16 of the California Constitution and Sections 33445, 33670, 33671 and 33675 of the Community Redevelopment Law, the Agency agrees that all Gross Sales Proceeds, and any interest thereon, are hereby irrevocably pledged to the Authority to defray costs associated with construction of the Transbay Terminal Project, and further agrees that such revenues shall not be subject to any other indebtedness whether from the Transbay Redevelopment Plan or any other City or Agency obligation. The Agency’s pledge of Gross Sales Proceeds shall survive expiration or termination of the Plan Documents. As used in this Agreement, the term “Gross Sales Proceeds” means proceeds from the conveyance of all or a portion of any State-Owned Parcel listed in the Cooperative Agreement from the Agency to a third party, which proceeds are the result of Agency’s good faith effort to obtain the fair market value from such third party for such State-Owned Parcel or portion thereof, in light of applicable laws.

3.1. If the Cooperative Agreement is in effect at the close of escrow, the Agency shall deposit the Gross Sales Proceeds into the Authority Trust Account as set forth in Section III.G.1. of the Cooperative Agreement.

3.2 The Agency's pledge of Gross Sales Proceeds shall survive termination of the Cooperative Agreement. If the Cooperative Agreement has been terminated for any reason at the close of escrow, the Agency shall deposit the Gross Sales Proceeds into escrow to the order of

the Authority as set forth in Section 5.1 of the Option Agreement and Section 2.1 of the Implementation Agreement.

4. Statement of Indebtedness; Covenant to Appropriate. As provided in the Community Redevelopment Law, the Agency shall submit to the City Controller a Statement of Indebtedness on an annual basis showing, among other things, the projected amount of Net Tax Increment as the Agency's indebtedness for the Transbay Redevelopment Plan for the ensuing fiscal year. Pursuant to Article XVI, Section 16 of the California Constitution and the Community Redevelopment Law, the Board of Supervisors of the City covenants to take such actions as are necessary to appropriate such legally available funds as are required to pay the Agency's indebtedness secured by the pledges described in Sections 2 and 3 of this Agreement, based on the Agency's submission of statements of the Agency's indebtedness as provided above. Furthermore, the City shall comply with the provisions of the Community Redevelopment Law, pursuant to Health and Safety Code Section 33670 et seq., that generally entitle the Agency to all of the property tax revenues realized from growth in property values since the inception of the Transbay Redevelopment Plan to the extent that the Agency has incurred debt approved in accordance with the Community Redevelopment Law for the implementation of the Transbay Redevelopment Plan.

5. Payment of Net Tax Increment. The Agency shall provide Net Tax Increment and interest thereon, as shown on the Agency's Statement of Indebtedness, to the Authority, into such accounts as the Authority may direct, within ten (10) days of receipt from the City, without setoff or counterclaim.

5.1. In the event that the parties agree in writing to the Agency's issuance of bonded indebtedness on anticipated Net Tax Increment, proceeds from the sales of the bonds and interest thereon shall be deposited into a separate trust account and such trust account shall be segregated from all other accounts and funds of the Agency, and separate records shall be kept of all transactions associated with the segregated account. Distribution to the Authority of such proceeds and interest shall occur in whatever manner the parties may agree which is in compliance with the Internal Revenue Service codes governing tax-exempt financing.

5.2. The Agency shall make a separate determination of Net Tax Increment amounts due under this Agreement from any State-Owned Parcels that are consolidated with adjacent land, and shall submit the determination to the Authority and City for advance written approval. At a minimum, the Authority shall be accorded that portion of increment from the consolidated parcel which represents the Net Tax Increment from the original State-owned Parcel on a square foot basis. If the City or Authority make a claim that a square footage apportionment does not fairly represent the value of Net Tax Increment due in accordance with their obligations under the Cooperative Agreement, the Agency's determination shall be treated as a breach of this Agreement under Section 10 below.

6. Effective Date. This Agreement shall become effective after approval evidenced by resolution of the Authority as of the date (the "Effective Date") which is the latest of (i) the date upon which the Transbay Redevelopment Plan becomes effective, (ii) the date upon which the Board of Supervisors ordinance authorizing and approving this Agreement becomes effective, and (iii) the date on which the City and Agency authorize, execute and deliver this Agreement.

7. Term. The term of this Agreement shall begin on the Effective Date and shall end forty-five years (45) years after the effective date of the ordinance adopting the Transbay Redevelopment Plan.

8. No General Fund Commitment. The pledge of revenue under this Agreement shall be limited solely to revenues payable from Net Tax Increment and any interest earnings thereon, on the terms set forth above. Notwithstanding anything to the contrary contained herein, this Agreement is not intended to, and shall not, create any commitment or obligation of the City to satisfy all or any portion of such indebtedness out of its General Fund, nor shall this Agreement be construed in any manner that would violate the debt limitations under Article XVI, Section 18 of the State Constitution or of the City's Charter, including Section 3.105 of the Charter.

9. Increment from Other Project Areas. The parties recognize and agree that this Agreement shall not require that revenue from tax increment or tax allocation bonds be made available to the Authority for the Transbay Terminal Project beyond the Net Tax Increment generated from within the Project Area; provided that, nothing in this Agreement shall prohibit the Agency and City, in their sole and absolute discretion, from making such revenue from outside the Redevelopment Plan area available to the Authority for purposes of the Transbay Terminal Project.

10. Remedies.

10.1 General.

(a) In the event of any default in or breach of this Agreement (each a "default"), the Option Agreement, or the Implementation Agreement or any of its terms, the non-defaulting party may deliver a written notice of default to the other regarding such default. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise, and the manner in which the failure of performance may be satisfactorily cured. Upon receipt of such notice of default, either the City or the Agency, as applicable, shall commence within a reasonable time not to exceed sixty (60) days to cure or remedy such default, and shall thereafter pursue such cure or remedy to completion.

(b) Upon delivery of a notice of default, the City and the Agency, together with the Authority, shall promptly meet to discuss the default and the manner in which the defaulting party can cure or remedy the same so as to satisfy the aggrieved party's concerns. The City, Agency and the Authority shall continue meeting regularly, discussing, investigating and considering alternatives for a period of sixty (60) days from the delivery of the notice of default. If, at the end of the meet and confer period, the aggrieved party no longer holds the view that the other party is in default, such party shall issue a written acknowledgment of the other party's cure or remedy of the matter which was the subject of the notice of default.

(c) If (i) action is not diligently taken or pursued, or the default shall not be cured or remedied within a reasonable time or (ii) either the City or the Agency, which is alleged to be responsible for the default, shall refuse to meet and discuss as described above, then the aggrieved party may institute such proceedings (except as otherwise limited by this Agreement,

and in particular, Section 10.2) as may be necessary or desirable in its opinion to cure and remedy such default, including, without limitation, proceedings to compel specific performance by the party in default of its obligations. Nothing in this Section shall require a party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such party. The parties acknowledge that termination is a remedy only in the event that the Authority formally resolves to abandon the Transbay Terminal Project as described in the Cooperative Agreement.

10.2 No Monetary Damages. The parties have determined that monetary damages are generally inappropriate and that it would be extremely difficult and impractical to fix or determine the actual damages to a party as a result of a breach or default under this Agreement and that equitable remedies and remedies at law not including damages are the appropriate remedies for enforcement of this Agreement. The parties would not have entered into this Agreement if either of them were liable to the other or to the Authority, including any Transferee of the Authority, for damages under or with respect to this Agreement. Consequently, the parties have agreed that neither party shall be liable in damages to the other, or to the Authority, including any transferee or assignee, or to any other person, and each covenants not to sue for or claim any monetary damages and expressly waives its right to do so (A) for any breach of, or which arises out of, this Agreement or (B) arising out of or connected with any dispute, controversy or issue regarding the application, interpretation or effect of the provisions of this Agreement, except that injunctive relief to be allowed.

10.3 Attorneys' Fees. In the event of any dispute or any legal action or other dispute resolution mechanism to enforce or interpret any provision of this Agreement, the prevailing party shall not be entitled to attorneys' fees.

11. General Provisions

11.1 Notices. A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

- (i) In the case of a notice or communication to the Agency:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Reference: Transbay Redevelopment Project
Telefacsimile: (415) 749-2565

With a copy to:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102

Attn: General Counsel
Reference: Transbay Redevelopment Project
Telefacsimile: (415) 749-2575

(ii) In the case of a notice or communication to the City:
Mayor's Office of Economic and Workforce Development
City and County of San Francisco
City Hall
401 Van Ness Ave., Third Floor
San Francisco, CA 94102
Attn: Rich Hillis
Reference: Transbay Redevelopment Project
Telefacsimile: (415) 554-6474

With a copy to:

Office of the Controller
City and County of San Francisco
875 Stevenson Street, Room 235
San Francisco, California 94103
Attn: Controller
Reference: Transbay Redevelopment Project
Telefacsimile: (415) 554-7466

And to:

Office of the City Attorney
Room 234, City Hall
San Francisco, CA 94102
Attn: Real Estate & Finance Team
Reference: Transbay Redevelopment Project
Telefacsimile: (415) 554-4722

(iii) In the case of a notice or communication to the Authority:

Office of the Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105
Telefacsimile: (415) 597-4615

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;

- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked “Request for Approval under the Transbay Redevelopment Project Tax Allocation Pledge Agreement”; and
- (d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

11.2 Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City, Authority and Agency. The Agency and the City shall not amend the Transbay Redevelopment Plan or the Plan Documents in any manner that would decrease the pledge of Net Tax Increment as provided herein, without in each case obtaining the prior written consent of the Authority, which may be given or withheld by its Board of Directors in its sole reasonable discretion. The Mayor and the Controller of the City (or any successor City officer as designated by law), the Executive Director of the Authority, and the Executive Director of the Agency shall have the authority to consent to any non-material amendments or other modifications to this Agreement. For purposes hereof, “non-material change” shall mean any change which does not decrease the pledge of Net Tax Increment which is the subject of this Agreement. Material amendments to this Agreement shall require the approval of the Board of Supervisors, by resolution.

11.3 Severability. If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement and to the Owner before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive the City or the Agency of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice

to the other party. In the event of such termination, neither party, nor the Owner, shall have any further rights or obligations under this Agreement.

11.4 Non-Waiver. Any delay or failure by the City or the Agency, or the Authority, to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

11.5 Successors and Assigns; Third Party Beneficiary. This Agreement shall inure to the benefit of and bind the respective successors and assigns of the City and the Agency. The Authority, including any transferee or assignee of the Authority, is an intended third party beneficiary of this Agreement. Except as provided above with respect to the Authority and its permitted transferees and assignees, this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

11.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

11.9 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

12.10 Entire Agreement. This Agreement (including the Exhibits) contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other Person and no court or other body shall consider those drafts in interpreting this Agreement.

IN WITNESS WHEREOF, the City, the Authority and the Agency have duly executed and delivered this Agreement as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO

By _____, Mayor

By _____
Gloria L. Young, Clerk of
the Board of Supervisors

By _____
Edward Harrington, Controller

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By _____
Donnell Choy
Deputy City Attorney

REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO

By _____
Marcia Rosen
Executive Director

APPROVED AS TO FORM:

By _____
James B. Morales
Agency General Counsel

TRANSBAY JOINT POWERS AUTHORITY

By _____
Maria Ayerdi
Executive Director

APPROVED AS TO FORM:

By _____
Deputy City Attorney

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

ALLOCATION AGREEMENT

LIST OF EXHIBITS (PLAN DOCUMENTS)

EXHIBIT A	Cooperative Agreement,
EXHIBIT B	Option Agreement
EXHIBIT C	Implementation Agreement

