Executive Summary of
The Transbay Enforceable Obligations
April 10, 2012

This summary is made with reference to the enforceable obligations for the Transbay Transit Center Project (sometimes referred to below as the "Project") as shown on the Recognized Obligation Payment Schedule ("ROPS") dated as of April 10, 2012, for the City and County of San Francisco (the "City"), as successor agency to the Redevelopment Agency of the City and County of San Francisco (the "Agency"). More particularly, this description relates to items Housing TB 1 and Non-Housing TRAN 1, TRAN 2, TRAN 3 and TRAN 4 on the ROPS.

The Project is one of San Francisco's three critical redevelopment legacy projects that the City, as successor agency to the Agency, must continue to implement under enforceable obligations consistent with ABX1 26. The Project is vital to the welfare of the State of California. Recognizing the State-wide importance of the Project, in 2003, the State Legislature enacted AB 812 (Yee, 2003) authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center Project (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). Also in 2003, in an agreement with the Transbay Joint Powers Authority (the "TJPA") and the City (the "Cooperative Agreement"), the State agreed to transfer approximately 10 acres of State-owned property (the "State-owned parcels") in and around the then-existing Transbay Terminal to the City and the TJPA to help fund the development of the Project.

In 2005 and 2006, the City adopted the Redevelopment Plan for the Transbay Redevelopment Project Area (the "Redevelopment Plan") and approved related agreements not only to provide direct funding for the Project, but also to improve the area surrounding the Project (the "Project Area") and thus enhance the Project’s financial feasibility. In 2008, California voters passed Proposition 1A, a state-wide ballot initiative directing that California’s High-Speed Rail system connect the Transbay Transit Center Project with Los Angeles and Anaheim.

The Project and Project Area are subject to enforceable obligations consisting of binding agreements and obligations of state law, unique in a number of key respects. Completing the Project and Project Area and recognizing the enforceable agreements, including the pledge of tax increment, would:

- Protect the State’s Investment in the Project–The State has contributed 10 acres of valuable San Francisco real estate to the Project on condition that the TJPA maximize the value of the State land for sale and use such funds to complete the transit center. If the Project is delayed or stopped due to loss of tax increment funding, the State’s investment could be compromised.

- Advance Statewide Goals–The Project is a national model for transit-oriented development. It promotes the Sustainable Communities Strategies required by the Sustainable Communities and Climate Protection Act of 2008 (SB 375, Steinberg, Statutes of 2008) and related transportation, affordable housing, job creation, environmental protection, and climate change goals. The Project will achieve the
State mandated goal in AB 812 of building affordable housing in the Project Area only if the tax increment committed to the Project is used as set forth in the existing enforceable obligations.

- Enable Required Repayment of the Federal TIFIA Loan—A $171 million federal loan is secured by tax increment revenues that will be generated by the sale of the State Parcels and certain other Project related revenues. The TJPA is not aware of any other California public project that relies on the same funding arrangement; i.e., where tax increment is pledged to repay a loan from the federal government.

- Fund infrastructure and affordable housing in the Project Area—The tax increment from the non-State-owned property is necessary to maximize and give full value to the State-owned parcels, consistent with enforceable obligations and necessary to fund construction of the Project.
ENFORCEABLE OBLIGATIONS GOVERNING
SAN FRANCISCO LEGACY PROJECT TRANSBAY TRANSIT CENTER
AND TRANSBAY REDEVELOPMENT PROJECT AREA

I. Introduction: AB 26 Protects Enforceable Obligations And Ongoing Pledges Of Tax Revenues (Former Increment) From Redevelopment Project Areas Under Such Obligations.

Chapter 5, Statutes of 2011, ABx1 26 ("AB 26") requires the City and County of San Francisco (the "City"); as successor agency to the Redevelopment Agency of the City and County of San Francisco (the "Agency"), to make payments under and perform the former Agency's "enforceable obligations", as defined in such act. (See California Health and Safety Code sections 34174(a), 34177(a), (b) and (c)); all section references are to the California Health and Safety Code section 33000 et. seq. (the "CRL") unless otherwise noted.) Under the act's express terms, nothing in AB 26 should be construed to give rise to an event of default under any of the documents governing the enforceable obligations. (See section 34174(a.).) An underlying premise of these provisions is to avoid an unconstitutional impairment of contract rights.

AB 26 defines "enforceable obligations" to include bonds, loans, judgments or settlements, and any "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy", as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. (See sections 34167(d)(5) and 34171(d)(1).) AB 26 excludes from that definition certain contracts solely between a redevelopment agency and the city or county that formed that redevelopment agency. (See section 34171(d)(2).)

AB 26 requires that successor agencies complete approved development projects that are subject to enforceable obligations by mandating that successor agencies perform those obligations and continue to oversee development until the contracted work has been completed or the contractual obligations can be transferred to other parties. (See sections 34177(a),(b),(c) and (i).) Importantly, AB 26 expressly requires that pledges of increment associated with enforceable obligations of former redevelopment agencies be honored. (See sections 34175(a), 34172(c) and (d), and 34174(a.).) And AB 26 provides for successor agencies to make new pledges of property tax revenues (former tax increment) under pre-existing agreements comprising enforceable obligations, subject to approval of their oversight boards and review by the State Controller and State Department of Finance. (See sections 34180(i) and 34178.)

On January 24, 2012 the City's Board of Supervisors unanimously adopted Resolution No. 11-12 (the "City Resolution"), and on January 26, 2012 the Mayor signed the City Resolution, regarding the dissolution of the Agency and the transfer of its assets and obligations. Consistent with AB 26, the City Resolution provided for the City to accept the Agency's housing assets (including the Low and Moderate Income Housing Fund) upon the Agency's dissolution. The City Resolution also provided for the City to accept all of the other assets of the former Agency and to perform the City's duties under AB 26 as successor agency, including making payments and performing enforceable obligations of the former Agency.
On February 1, 2012, the Agency ceased to exist by operation of law as a result of AB 26 and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, No. S194861, which upheld AB 26 and extended AB 26's implementation deadlines. The City, as successor agency to the Agency under AB 26 and the City Resolution, assumed the assets and enforceable obligations of the Agency subject to the terms, conditions and limitations set forth in AB 26. The debt of the Agency has become the debt of the City as the Agency's successor agency, but such debt is payable only from the property tax revenues (former tax increment) or other revenue sources that originally secured such debt. AB 26 expressly limits the liabilities of a successor agency in performing duties under AB 26 to the amount of property tax revenues received by such successor agency under AB 26 (generally equal to the amount of former tax increment received by the former redevelopment agency) and the assets of the former redevelopment agency. AB 26 does not make any of the City's general funds responsible or available to pay or perform the former Agency's enforceable obligations. And AB 26 does not pledge any of the City's general fund revenues to pay any of the former Agency's debt, nor does AB 26 obligate the City's general fund to repay any such debt.

In the City Resolution, the Board of Supervisors identified three major integrated, multi-phase revitalization projects that are vital to the City's future and will achieve numerous public benefits for the City, region and the State. These "legacy" projects include (1) the Mission Bay North and the Mission Bay South Redevelopment Projects (collectively "Mission Bay"), (2) Phases One and Two of the Hunters Point Shipyard Redevelopment Project and Zone 1 of the Bayview Hunters Point Redevelopment Project (collectively, "Hunters Point Shipyard/Candlestick Point"), and (3) the Transbay Transit Center Redevelopment Project, including Zone 1 ("Transbay") (collectively, the "Major Approved Development Projects"). The Board of Supervisors found that the enforceable obligations for the Major Approved Development Projects include the continuing pledge for the duration of those projects of property tax revenues generated in the project areas (former tax increment) for building public infrastructure, public facilities and affordable housing.

In the City Resolution, the Board of Supervisors also found that the terms of the enforceable obligations for the Major Approved Development Projects specifically obligate the issuance of bonds or other evidences of indebtedness, with such bonds to be repaid through such pledges of tax revenues. To fulfill the enforceable obligations with third parties under the Major Approved Development Projects, the City as successor agency must issue or otherwise ensure the issuance of new bonds secured by the pledges of property tax revenues from such areas or otherwise payable from such property tax revenues, subject to approval by the new oversight board and review by the State Department of Finance under the process contemplated by AB 26. Private developers and other third parties have acted in good faith reliance on these enforceable obligations, entered into agreements, and invested substantial private funds and state and federal grant monies, and donated land to the State, in the Major Approved Development Projects, which are underway and in various stages of development.

II. **Summary Of The Transbay Project.**

In April 2001, the City, the Alameda-Contra Costa Transit District ("AC Transit"), and the Peninsula Corridor Joint Powers Board executed a joint exercise of powers agreement
creating the Transbay Joint Powers Authority (the "TJPA"). The purpose of the TJPA is to
design, build, develop, operate and maintain a new transportation terminal in San Francisco
known as the Transbay Transit Center (the “Transbay Transit Center” or the "Project").

The Transbay Transit Center is vital to the welfare of the State of California.
Recognizing the state-wide importance of the Project, in 2003, the State Legislature enacted AB
812 authorizing the demolition of the historic Transbay Terminal building and the construction
of the new Transbay Transit Center (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal.
Public Resources Code). Also in 2003, in an agreement between the State, the TJPA and the
City (the “Cooperative Agreement”), the State agreed to transfer approximately 10 acres of
State-owned property (the “State-owned parcels”) in and around the then-existing Transbay
Terminal to the City and the TJPA to help fund the development of the Project. In 2008,
California voters passed Proposition 1A, a state-wide ballot initiative directing that California’s
High-Speed Rail system connect the Transbay Transit Center with Los Angeles and Anaheim.

The Project includes construction of a modern, regional multi-modal transit center with
an above-grade bus level, a 5.4-acre rooftop public park, and two below-grade rail levels serving
Caltrain and future California High Speed Rail. “Phase 1” of the Project consists of a Temporary
Terminal and the Transit Center, which includes above-grade bus levels, the below-grade train
box, a 5.4-acre rooftop park, bus ramps connecting to the Bay Bridge, and bus storage. “Phase
2” consists of the improvements necessary to extend the rail connections into the train box. The
estimated cost of Phase 1 of the Project is $1.589 billion. Phase 1 is fully funded. The funds
required to build Phase 1 have been secured from a variety of sources, including sales of the
State-owned parcels and net tax increment revenue (“TI”) from the Transbay Redevelopment
Plan. Phase 1 of the Project has been under construction since 2009 when the TJPA broke
ground for the Temporary Terminal. Construction of the new Transit Center began in 2010.

The Transbay Transit Center is also vital to the future of the City and County of
San Francisco. The Board of Supervisors of the City and County of San Francisco (“Board of
Supervisors”) adopted, by Ordinances No. 124-05 (June 21, 2005) and No. 99-06 (May 9, 2006),
the Redevelopment Plan for the Transbay Redevelopment Project Area (the “Redevelopment
Plan”). Under the Redevelopment Plan, the City and the Agency established a development
program for the revitalization of the Project Area and a funding mechanism for the Transbay
Transit Center and other improvements inextricably related to the Transbay Transit Center. The
Board of Supervisors also approved several agreements that constitute enforceable obligations
under AB 26 and that ensure the implementation of the Redevelopment Plan.

The Project is subject to binding agreements and obligations of state law that pre-exist
January 1, 2011. These agreements and obligations require that the Project be completed using
pledges of TI for that purpose, including the construction of the Transbay Transit Center,
affordable housing and public infrastructure.

Under the Cooperative Agreement, the State-owned parcels and the Redevelopment Plan
are interdependent. As a condition of the transfer of the State-owned parcels, the State required
that the TJPA sell the State-owned parcels and use the revenues from the sales to finance the
Project. The Cooperative Agreement also requires that the TJPA use TI from the State-owned
parcels to fund the Project. To satisfy this obligation to the State, in 2008, the Agency and the
City entered into a binding agreement with the TJPA that irrevocably pledges all TI from the State-owned parcels to the Project for a period of 45 years (the “Pledge Agreement”).

The Agency also promised TI from non-State-owned property to implement those aspects of the program under the Redevelopment Plan designed to improve the areas surrounding the Project and to generate additional revenue for construction of the Project. Under a 2006 Implementation Agreement between the TJPA and the Agency (the "Implementation Agreement"), the Agency committed to use TI from the property within the Project Area, other than the State-owned parcels, to fund the infrastructure necessary to give maximum value to the State-owned parcels and to provide legally-mandated affordable housing described below. If the TI pledged to the TJPA under the Implementation Agreement for affordable housing and infrastructure in the Project Area—streets, lighting, landscaping, and parks—is not used for this purpose, then developers of the State-owned parcels would be required to bear some of the cost of this infrastructure and the affordable housing, resulting in a reduction in the prices they will pay for the State-owned parcels and a corresponding reduction in revenue on which the TJPA relied in starting construction of Phase 1 of the Project.

In committing substantial resources to the Project, the State also required that any redevelopment plan providing for the financing of the demolition of the old Transbay Terminal and construction of the Project “shall ensure” that specified amounts of affordable housing be made available for low and moderate income households. In particular, AB 812 mandates that 25% of the residential units developed in the Project Area “shall be available to” low income households, and an additional 10% “shall be available to” moderate income households. (Cal. Public Resources Code § 5021.1(b).) In 2005, at the time of the City's adoption of the Redevelopment Plan, the Agency estimated that approximately 1,200 units of housing would have to be developed for very low, low, and moderate income households to fulfill this statutory obligation.\(^1\) Under the Implementation Plan, the Agency is contractually obligated to fund the affordable housing program. Furthermore, as explained below, the obligations imposed by a state law, such as Section 5021.1(b) of the Public Resources Code, constitute an “enforceable obligation” that continues to bind the City as successor agency under AB 26.

Based on the mandates from the State Legislation and the voters described above, as well as the enforceable contracts between the City, the Agency, the TJPA and the State Department of Transportation describe above, in 2010 the TJPA entered into a TIFIA\(^2\) loan agreement with the United State Department of Transportation (“USDOT”). The $171 million TIFIA loan is a necessary part of the funding package for Phase 1 of the Project, and with this contract the TJPA was able to begin construction of the Project. To obtain the TIFIA loan, the TJPA was required to provide collateral (or “security”) for the loan, which included the TI that the TJPA has the right to receive under the Redevelopment Plan and the Pledge Agreement as well as AC Transit's future Passenger Facilities Charges. Also, under the TIFIA loan agreement, the TJPA is required to diligently pursue and complete the Project and is not allowed to use the pledged TI for any purpose other than the Project (which includes repayment of the TIFIA loan). In the event of


\(^{2}\) Transportation Infrastructure Finance and Innovation Act.
default, the TIFIA lender, the USDOT, has all of the rights and remedies of a secured creditor; in short, the right to sue the TJPA as borrower to collect sums due and unpaid. (TIFIA Loan, p. 36, § 19(d).) No action taken by USDOT to pursue its remedies relieves the TJPA of any of its obligations to repay the loan. (Id., p. 36, § 19(f).) The remedies listed in Section 19 of the TIFIA Loan documents are not exclusive. (Id., p. 44, § 33.).

The Project has been under construction since 2009. In reliance on these legislative directives and binding agreements, the TJPA constructed a Temporary Terminal, began operation of the Temporary Terminal in 2010, and then demolished the old Transbay Terminal and bus ramps. The TJPA also purchased right-of-way property, relocated dozens of businesses and utility lines, and is in the process of excavating the site and constructing shoring and buttress shafts for the new Transit Center. In sum, construction of the new Transbay Transit Center is well underway.

The Project will provide a multi-modal facility that meets future needs for bus, commuter rail, and high-speed rail transit. As the largest construction project in the Bay Area after the Bay Bridge, the Project will create, directly and indirectly, nearly 125,000 new jobs, and increase the Gross Regional Product by $2 billion. If the enforceable pledge of TI or other enforceable obligations described in this summary are not observed, it could cause the immediate loss of thousands of construction jobs and the loss of other substantial public benefits.

AB 26 defines “enforceable obligation” to mean, among other things, “obligations imposed by state law,” Cal. Health & Safety Code § 34171 (d) (1) (C), and “payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency.” Cal. Health & Safety Code § 34171 (d) (1) (G). Successor agencies are required to “[p]erform obligations required pursuant to any enforceable obligation,” Cal. Health & Safety Code § 34177 (c), and to make payments due for enforceable obligations. Cal. Health & Safety Code § 34171 (a). Because of the above contractual commitments; the City’s, the TJPA’s and the USDOT’s reliance on those commitments (as well as the numerous parties involved in the construction); the irrevocable pledge of TI from the State-owned parcels to the Transbay Transit Center; and the commitment of TI for the construction of infrastructure and affordable housing in the Project Area, are all “enforceable obligations” under AB 26.

III. The 2008 Pledge Of Tax Increment Revenue From The State-Owned Parcels Is An Enforceable Obligation As Defined In AB 26.

Under the portions of AB 26 restricting the actions of and dissolving redevelopment agencies, an “enforceable obligation” that survives the dissolution of a redevelopment agency is “[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.” (§ 34171(d)(1)(E); see also § 34167(d)(5).) Specifically, AB 26 provides that:

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3 See Health and Safety Code § 34161, et seq.
4 All statutory citations are to the California Health and Safety Code unless otherwise stated.
It is the intent of this part\(^5\) that pledges of revenue associated with enforceable obligations of the former redevelopment agencies are to be honored. It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of the pledge, or the stream of revenues available to meet the requirements of the pledge.

\(^{(§ 34175(a))}\) [emphasis added].)

Therefore, a pledge of revenue (including a continuing pledge of TI from a redevelopment project area) is an enforceable obligation.

A. The 2003 Cooperative Agreement Between The State, City And The TJPA.

The agreement establishing the State’s obligation to transfer parcels to the City and to the TJPA for the Project is the cooperative agreement among the State of California, the City and the TJPA, which became effective July 11, 2003 (the "Cooperative Agreement"). Under the Cooperative Agreement, the State will convey 24 State-owned parcels to the City and the TJPA. (Cooperative Agreement, pp. 10-12, §§ II.A and II.B.) The parties agreed that the Redevelopment Plan would be structured to dedicate the net TI and the gross sales proceeds from all of the State-owned parcels to development of the Project. (Id., p. 3, Recitals.) Accordingly, under the Cooperative Agreement:

“The City covenants that all Net Tax Increment . . . from the development of the State-owned Parcels, shall be provided to the [TJPA] to use for any costs associated with the construction and design of the New Transbay Terminal and access ramps.” (Cooperative Agreement, pp. 19-20, § III.I.)

The State, the City, and the TJPA entered into the Cooperative Agreement in furtherance of AB 812 (Cal. Public Resources Code § 5027.1) and the Project. This agreement with the State specifically contemplated and required the use of net TI and sales proceeds for the Project. The 2008 Pledge Agreement and Option Agreement described below are therefore consistent with a State legislative mandate as well as a State contractual mandate, all entered into long before the operative date set forth in AB 26.

B. The 2008 Tax Increment Allocation And Sales Proceeds Pledge Agreement.

The City, the Agency and the TJPA entered into the Pledge Agreement effective January 31, 2008, pledging all of the sales proceeds and all of the TI from the identified 10 acres of State-owned parcels for the Project. The State contributed these State-owned parcels to the Project under the Cooperative Agreement, as described above.

The Pledge Agreement provides that all Net Tax Increment and Gross Sales Proceeds (as these terms are defined):

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\(^{5}\) Part 1.85 (Dissolution of Redevelopment Agencies and Designation of Successor Agencies, Chapter 1. Effective Date, Creation of Funds, and Definition of Terms), § 34170 et seq.
. . . shall be irrevocably pledged to the [TJPA], and that the [TJPA] 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 [TJPA], that [the TJPA] is entitled to rely on this Agreement, receive benefits and revenues conferred by this Agreement and to enforce any provisions of this Agreement against any party to this Agreement . . .

(Pledge Agreement, p. 3, § 1 [emphasis added].) The Pledge Agreement further provides that:

. . . the Agency and City agree that all property tax increment revenues attributable to parcels or portions thereof acquired by the City or the [TJPA] from the State of California pursuant to the Cooperative Agreement (“Net Tax Increment”), and any interest thereon, are hereby irrevocably pledged to the [TJPA] 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 Redevelopment Plan or any other City or Agency obligation.” (Id., pp. 3-4, § 2 [emphasis added].)

Thus, under the Pledge Agreement, all of the sales proceeds and all of the TI from the State-owned parcels are irrevocably pledged to the Project and may not be used for any other purpose. This irrevocable pledge remains in effect for 45 years after the 2005 ordinance adopting the Redevelopment Plan. (Id., p. 5, § 7.) Accordingly, the irrevocable pledge of TI does not end until 2050.

The Pledge Agreement is an enforceable obligation of the Agency and the City under AB 26. The TJPA relied on this enforceable obligation to demolish the existing Transbay bus terminal, design and begin construction of the Project, and enter into numerous agreements in furtherance of the Project, as described below. Failure to honor the pledge of TI as set forth in the Pledge Agreement would result in the breach of obligations to AC Transit, the State of California and USDOT, as further described below.

C. The 2008 Option Agreement For The Purchase And Sale Of Real Property.

At the same time as the parties entered into the Pledge Agreement, the City, the Agency and the TJPA entered into an agreement, also effective January 31, 2008, which grants options to the Agency to acquire the State-owned parcels, arrange for development of the parcels, and distribute the net TI to the TJPA to use for the Project (the “Option Agreement”). The findings of the Option Agreement include the following:

- TI will be used for construction and operation of the new Transbay Terminal (Id., p. 2, § I(3)).
The purpose of the Option Agreement is to implement the Redevelopment Plan under the terms of the Cooperative Agreement\(^6\) (\textit{Id.}, p. 3, § N).

After exercising its options, the Agency intends to transfer all TI from State-owned parcels to the TJPA for the development of the Transbay Terminal (\textit{Id.}, p. 3, § O(ii)).

In furtherance of these objectives, the Agency and the City agreed that “\textit{all Net Tax Increment} (as defined in the Cooperative Agreement)\(^7\) shall go to TJPA “to use for costs associated with the construction and design of the New Transbay Terminal (as defined in Section I.A. of the Cooperative Agreement). The Agency shall use its best efforts to maximize the amount of Net Tax Increment to be provided to [the TJPA]. The Agency obligations in this Section 14.3 shall survive termination or expiration of this Agreement.” (Option Agreement, p. 17, § 14.3 [emphasis added].)

D. Reliance On And Commitment Of Pledged Tax Increment As Security For The 2010 TIFIA Loan.

As a result of the State mandate that the TJPA complete construction of the Project; the irrevocable pledge of TI from the State-owned parcels to the Transbay Transit Center; the City's, the TJPA’s and the USDOT's reliance on that pledge; and the TJPA’s numerous other commitments involved in the ongoing construction of the Project, the pledge of TI from the State-owned parcels for repayment of the TIFIA loan is an “enforceable obligation” under AB 26.

On January 1, 2010, the USDOT and the TJPA entered into a $171 million TIFIA Loan Agreement (the “Loan Agreement”) for “the design and construction of a temporary terminal, the design of the below-grade rail facilities of the Transbay Transit Center and the design and construction of the Transbay Transit Center’s bus facilities, bus ramps to the Bay Bridge and bus storage facilities...”\(^8\) (See Loan Agreement, p. 12 [Definition of “Project”].)\(^9\)

\(^6\) See Part I.C, below.

\(^7\) As defined in the Cooperative Agreement, Net Tax Increment does not include: (i) City administration charges, (ii) the affordable housing set-aside under Community Redevelopment Law (“CRL”), (iii) the amount due to other governmental entities under CRL, and (iv) the portion of tax increment revenues equal to the percentage of such revenues that the State may mandate the Agency to pay from time to time in the future. (Cooperative Agreement, pp. 19-20, § III.H.)

\(^8\) In addition to the TIFIA loan, the TJPA has obtained a $400 million grant from the Federal Railroad Administration in August 2010, $8.8 million in funding from FTA Section 1601, $29 million from FTA High Priority Bus, $24.8 million for Project of National and Regional Significance and $2.7 from FRA Rail Relocation, bringing the total federal investment to $636.3 million.

\(^9\) The TIFIA loan is directly related to the 2008 voter mandate in Proposition 1A that the northern terminus for High-Speed Rail would be the Transbay Transit Center: “It is the intent of
The TI revenue pledged to the TJPA under the Pledge Agreement is part of the security for the TIFIA loan. Under the Loan Agreement, the TJPA “pledges, assigns and grants, a security interest in and to Borrower’s right, title and interest in the Collateral . . .” (Id., p. 18, § 8(a).) The term “Collateral” is defined to include “all Pledged Revenues” and “all . . . rights to receive Pledged Revenues whether existing as of the Effective Date or thereafter acquired,” and “all rights to receive Pledged Revenues due and to become due under or pursuant to Security Documents.” (Id., p. 4.) The “Security Documents” include the Pledge Agreement, the Cooperative Agreement, the Option Agreement, and any and all other documents executed in connection with or materially affecting the Pledged Revenues. (See id., p. 13.) “Pledged Revenues” includes Net Tax Increment and Annual Capital Contributions. (Id., p. 12.) As part of the Loan Agreement, the TJPA promised that it “shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 and the Collateral Agency Agreement . . .” (Id., p. 18, § 8(c.).)

The following additional provisions of the Loan Agreement confirm USDOT reliance on the pledge of all TI from the State-owned parcels and the TJPA’s obligation to complete the Project based upon all of the agreements that have been entered into in furtherance of the Project:

- Among the list of conditions precedent for committing to the loan are the following:
  - “The Borrower [TJPA] shall have demonstrated to the TIFIA Lender’s satisfaction that the funds forecasted to be available under the Base Case Projections will be sufficient to complete the Project.” (Id., p. 23, § 13(g).)
  - “The Borrower [TJPA] shall have delivered to the TIFIA Lender a certified schedule acceptable to the TIFIA Lender demonstrating that the projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule.” (Id., p. 24, § 13(j).)

The Legislature by enacting this chapter and of the people of California by approving [Proposition 1A] to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim.” (Sts. and High. Code § 2704.04(a).) In compliance with this directive from the State, the TJPA, entered into an agreement with the federal government for a TIFIA loan, secured a federal stimulus grant for $400 million, entered into numerous other contracts, and started construction of the new Transit Center.

10 The definition of “Net Tax Increment Revenues” in the TIFIA Loan Agreement incorporates the definition of “Net Tax Increment” from the Pledge Agreement. (See TIFIA Loan Agreement, p. 8 and Pledge Agreement, pp. 3-4, § 2.)

11 “Annual Capital Contributions” is the AC Transit Passenger Facilities Charge, discussed above in Part III. (See TIFIA Loan Agreement, pp. 2-3,12.)

12 This is an ongoing obligation. The most recent affirmation letter by Fitch Ratings is dated September 2011.
Among the representations and warranties for the loan are the following:

- “The Principal Project Contracts . . . are in full force and effect.” (*Id.*, pp. 26-27, § 14(o).)

- “The Agency shall diligently prosecute the work relating to the Redevelopment Plan . . .” (*Id.*, p. 27, § 14(r).)

- TJPA “shall use its best efforts to cause the Net Tax Increment to not be reduced through a State mandate to the Agency pursuant to clause (d) of the definition thereof. To the extent that the [TJPA] or Agency has a remedy to prevent such reduction, [TJPA] shall take action to implement such remedy or use its best efforts to cause Agency to take action to implement such remedy.” (*Id.*, pp. 27-28, § 14(v).)

The TJPA's covenants include the following:

- Except for Permitted Debt, TJPA “shall not issue or incur indebtedness of any kind.” (*Id.*, p. 28, § 16(a).)

- Duty to keep the Collateral “free and clear of any pledge . . .” (*Id.*, p. 28, Section 16(b).)

- TJPA “shall cause the work relating to the Project to be diligently prosecuted and the Project to be completed in accordance with the Construction Schedule . . .” (*Id.*, p. 29, § 16(e).)

- Operate and maintain the Project. (*Id.*, p. 29, § 16(f).)

Events of Default for the TJPA include the following:

- Failure of TJPA to reasonably prosecute the work relating to the Project. (*Id.*, p. 33, § 19(a)(iii).)

- Project abandonment. (*Id.*, p. 35, § 19(a)(x).)

- Upon the occurrence of an Event of Default, Lender’s obligations are terminated and the unpaid principal amount of the Loan, together with all accrued interest, fees, costs, expenses, indemnities and other amounts payable to the TIFIA lender, “shall automatically become immediately due and payable.” (*Id.*, pp. 35, § 19(b)-(c).)

- The TIFIA lender’s remedies include “[a]ctions at law or in equity to collect sums due. Lender shall have all the rights and remedies of a secured creditor.” (*Id.*, p. 36, § 19(d).)

The TJPA is contractually obligated to USDOT to complete the Project. The TIFIA loan is integral to the funding plan for Phase 1 (the Transit Center), and was one of the many sources
of funds needed for the commencement and completion of Phase 1. The Loan Agreement required the TJPA to demonstrate that Phase 1 was fully funded before the TIFIA loan became effective and construction of the Project began. (See Loan Agreement, p. 16, Section 4(i).) The TJPA is actively servicing the TIFIA loan, and the TJPA has been paying a loan servicing fee. (Id., pp. 42-43, Section 28(a).) Under the Loan Agreement, the TJPA must use the Pledged Revenues, including net TI, to pay loan servicing costs and expenses before being used for debt service, reserves, or other approved purposes. (Id., p. 19, § 8(e).)

IV. **The 2006 Transbay Redevelopment Project Implementation Agreement Is An Enforceable Obligation As Defined In AB 26.**

To facilitate the development of the State-owned parcels, and generate TI for the Transbay Transit Center, the City and the Agency adopted the Redevelopment Plan in June 2005. The TJPA and the Agency subsequently executed the Implementation Agreement, which defines the respective roles and obligations of the two agencies in facilitating the development of the State-owned parcels to generate TI for the Transbay Transit Center Project. The Implementation Agreement requires the Agency to take the lead role in facilitating the development of the State-owned parcels.

Specifically, the Implementation Agreement requires the Agency to: (1) prepare and sell the State-owned parcels to third parties, (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost of constructing the Transbay Transit Center Project, and (3) implement the Redevelopment Plan to enhance the financial feasibility of the Project.

The Agency shall execute all activities related to the implementation of the Transbay Redevelopment Plan, including all administrative activities related to implementation, including, but not limited to, activities related to major infrastructure improvements, including new public parks, new pedestrian-oriented alleys, and widened sidewalks, as well as programs to support building rehabilitation, façade improvements, and historic preservation, relocation activities as necessary, as well as activities related to the development of more than 3400 new housing units, including the affordable housing requirements of Section 33413 of the California Community Redevelopment Law and the additional affordable housing requirements of Section 5027.1 of the California Public Resources Code. The costs for implementation of the Transbay Redevelopment Plan activities . . . shall be an indebtedness incurred by the Agency . . . .

(Implementation Agreement, p. 5, § 2.1(d).) Under the Implementation Agreement, the TJPA is required to pay the Agency’s staff costs to prepare and sell the State-owned parcels.

To facilitate the development of the State-owned parcels, the Redevelopment Plan describes a program of infrastructure and open space improvements that the Agency will construct. In 2006, the Agency further defined this program by adopting the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the “Streetscape Plan”), which includes detailed conceptual designs for new widened sidewalks, new street trees, new street lights, new pedestrian-oriented alleyways, new public parks, and other infrastructure
improvements necessary for the development of the State-owned parcels. The Implementation Agreement expressly requires that the Agency treat the cost of constructing these improvements as an indebtedness of the Agency and include it in the Agency’s annual budget. (Implementation Agreement, p. 5, § 2.1(d).)

As explained above, the Pledge Agreement is an enforceable obligation under AB 26, the purpose of which is to pledge TI generated by the development of the State-owned parcels. So long as the Redevelopment Plan, the Pledge Agreement, and the Implementation Agreement remain in effect, the City as successor agency will be required to facilitate the development of the State-owned parcels and execute all other activities related to the implementation of the Redevelopment Plan. Accordingly, the continued pledge of TI for the activities described in the Redevelopment Plan, and further defined in the Streetscape Plan, is an enforceable obligation within the meaning of AB 26.

The budget for Phase 1 of the Project is $1.589 billion. Of that, $429 million is expected to come from the net proceeds from sale of the State-owned parcels to developers. Under the Implementation Agreement, construction of the infrastructure and affordable housing to serve these development sites will be funded by TI from the non-State-owned property in the Transbay Project Area. If that TI is no longer available for its intended purpose, then the developers of the State-owned parcels will have to incur the cost of building infrastructure and affordable housing, and will pay less for the State-owned parcels. That reduction in sales proceeds from the State-owned parcels will create a gap in the budget for Phase 1 of the Project that will be difficult to fill, and may result in a delay in construction of Phase 1 of the Project. Any delay in construction would cause a loss of jobs and jeopardize the State’s investment in the Project.

Due to the State mandates identified above and the City’s, TJPA’s, and USDOT’s reliance on the commitment of TI from the non-State-owned parcels to build the infrastructure necessary to give full value to the State-owned parcels, the pledge of TI from the non-State-owned parcels is an “enforceable obligation” under AB 26.

V. The Affordable Housing Production Requirement Of The Public Resources Code Is An Enforceable Obligation As Defined In AB 26.

AB 26 defines “enforceable obligation” to mean, among other things, “obligations imposed by state law,” Cal. Health & Safety Code § 34171 (d) (1) (c), and “payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency.” As explained above, AB 812 requires that any redevelopment plan providing for the financing, in whole or in part, of the demolition of the old Transbay Terminal and construction of the new Transbay Transit Center ensure that specified amounts of housing affordable to low and moderate income households be made available.

Specifically, AB 812 mandates that 25% of the residential units developed in the Project Area covered by the Redevelopment Plan must be restricted to low income households, and an additional 10% must be restricted to moderate income households. In sum, a total of 35% of the new housing units in the Project Area must be low and moderate income housing (the “Transbay Affordable Housing Program”). (Cal. Pub. Res. Code § 5027.1(b).) Under Section 5027.1(b), these affordability restrictions must remain in effect for 45 years for ownership units and 55
years for rental units. The affordable housing component of the Transbay Affordable Housing Program is necessary to meet the State mandates of AB 32 and SB 375 for transit-oriented development.

In June 2005, the City adopted a Redevelopment Plan consistent with AB 812 that will facilitate the development of 3,400 new homes, 35% of which will be affordable. Also discussed above, the Agency and the TJPA later entered into the Implementation Agreement, under which the Agency promised to execute all activities related to implementation of the Redevelopment Plan, “as well as activities related to the development of more than 3,400 new housing units, including the affordable housing requirements of Section 33413 of the California Community Redevelopment Law and the additional affordable housing requirements of Section 5027.1 of the California Public Resources Code.” (Implementation Agreement, p. 5, § 2.1(d).) The Implementation Agreement further states that the costs to implement the Redevelopment Plan “shall be an indebtedness of the Agency and included in the Agency’s annual budget submitted to the City.” (Id.)

As explained above, the Pledge Agreement and the Implementation Agreements are enforceable obligations under AB 26, and will provide financing in part for the Project as well as streetscape and open space improvements necessary for the development of the State-owned parcels. So long as the Redevelopment Plan, the Pledge Agreement, the Implementation Agreement, and Section 5027.1 of the Public Resources Code remain in effect, the TI from the Project Area needed to complete the Transbay Affordable Housing Program is “an obligation imposed by state law” and is an indebtedness to the Low and Moderate Income Housing Fund that transfers, upon the Agency’s dissolution, to the Mayor’s Office of Housing as the successor housing agency. Accordingly, the continuing pledge of TI for affordable housing is an enforceable obligation within the meaning of AB 26.
Attachment 1

Other Activities Undertaken in Reliance on the Enforceable Obligations to Fund the Project and to Implement the Redevelopment Plan

The following summarizes the construction activities, and associated contractual commitments, that have occurred and are ongoing at the Project site since 2010 in reliance on existing enforceable agreements, including the Pledge Agreement, the Option Agreement, the Loan Agreement, and the Implementation Agreement. Also, on November 10, 2011, the TJPA entered into a project labor agreement with 28 signatory unions.

A. The 2008 Transbay Transit Center Program Lease And Use Agreement For The Temporary Terminal and Terminal.

On September 10, 2008, the TJPA entered into an agreement with AC Transit (the “Lease and Use Agreement”) in which AC Transit agreed to take possession of space in the Temporary Terminal when the TJPA completed construction of the Temporary Terminal including AC Transit’s tenant improvements, the bus parking and staging areas were available for occupancy by AC Transit, the TJPA certified that it had a contract to demolish the old Transbay Terminal, and the TJPA Board adopted a resolution certifying that it has the funds to construct the new Transit Center. The TJPA agreed that it “shall use its best efforts to complete Phase 1 of the [Project]” to allow AC Transit’s occupancy to occur within sixty (60) months after AC Transit begins operation in the Temporary Terminal. In reliance on this agreement, as well as the Pledge Agreement and the Option Agreement, AC Transit had assurance that the TJPA had the funds to complete the Project, and it therefore moved out of the old Transbay Terminal and began operations in the temporary terminal on August 7, 2010.

Under the Lease and Use Agreement, AC Transit also agreed to impose a passenger facilities charge (the “Passenger Facilities Charge”) on all passengers originating and ending at the Transbay Transit Center upon the commencement of service in the new Transit Center. This future stream of revenue will not be realized unless the Transbay Transit Center is completed for use by AC Transit buses. The Passenger Facilities Charge is the “Annual Capital Contributions” portion of the Pledged Revenues for the TIFIA loan, discussed in Part IVIA, above. Also as explained above, the TIFIA loan is an integral part of the funding for the Transit Center, and the Passenger Facilities Charge (along with the pledged TI) is part of the pledged security for the TIFIA loan.

In sum, when entering into the Lease and Use Agreement AC Transit relied on the Pledge Agreement, including the pledge of net TI and the TJPA's commitment to complete the Project. Accordingly, failure to use the net TI for the Project as set forth in the Pledge Agreement would

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13 The required certification was made on May 13, 2010 by TJPA Board of Directors Resolution No. 10-009.
cause the TJPA to be in default of its obligations to AC Transit under the Lease and Use Agreement.

**B. Transbay Terminal and Ramps Demolition; Right-of-Way Acquisition.**

The TJPA demolished the old Transbay Terminal at a cost of $14.0 million for Phase 1 facilities demolition. As of January 2012, the TJPA had incurred $69.5 million for Phase 1 right-of-way Acquisition, and $3.5 million for right-of-way support. For Phase 2 right-of-way acquisition, the TJPA had incurred $44.2 million plus $0.464 million for right-of-way support. (Progress Report 81, January 2012 ["PR 81"], p. 17.) As part of the right-of-way acquisition, dozens of businesses have been relocated.

**C. Temporary Terminal.**

As of January 2012, the TJPA had incurred costs for the Temporary Terminal of $25.7 million. (PR 81, p. 17.) The Temporary Terminal commenced operation on August 7, 2010. (Id., p. 3).

**D. New Transit Center.**

Installation of a cement-deep-soil-mixing (CDSM) wall around the perimeter of the Transbay Transit Center is complete. Installation of 207 buttress shafts in Zone 4 (between Beale and Fremont streets) is on the critical path; 41 buttress shafts had been completed as of January 2012. The contractor has commenced excavation in Zone 1 (east of Second Street) and Zone 2 (from Shaw Alley to First Street) progressed to a depth of approximately 15 feet as of January 2012. (PR 81, pp. 1, 9-10 and Figure 2.0.) “Construction of the Transit Center consisted of 274,005 workforce hours through January 2012.” (PR 81, p. 2.) Comments from other agencies on the 95% construction documents (Main Package) were received in January 2012 and are being incorporated into the construction documents. Transbay Program staff have prepared work schedules to complete the 100% Below-Grade Program construction documents and the 100% Main Package contract documents in March 2012. Transbay Program staff met with Caltrain and California High Speed Rail Authority (“CHSRA”) staff to confirm governing documents, high-level design criteria, and operations and maintenance requirements. (Id., p. 8.)

The Project has incurred design costs of $102.98 million as of January 2012. The Project has incurred construction cost of $67.185 million as of January 2012. (Id., p. 17.) “The TJPA commitments authorized for expenditure total $713.1 million to date, or 17.0 percent of the current budget.” (Id., p. 2.) “Of the $713.1 million in commitments, 69.9 percent ($499 million) has been incurred to date.” (Id.)

**E. Utility Relocation.**

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14 “Incurred to-date” is different from “Commitments,” “Baseline Budget” and “Current Budget.” (See, e.g., PR 81, p. 17, Table 6.1.)

15 The total project cost is $4.185 billion.
Utility relocation for the Project is being constructed in six trade packages. Work on four of the six trade packages is substantially complete; the remaining two trade packages are scheduled to be completed in 2012. (PR 81, p. 5.)

As of January 2012, the following utility relocation activities had been completed or was underway: Change order negotiation, project closeout and punch list for water, sewer and dry utility joint trenches on Minna Street, waterlines on Beale and Howard streets, water and sewer on Fremont Street, and waterlines on Natoma Street; completion of design and specification changes for a sludge line pipe to facilitate installation along Mission and Howard streets; coordination regarding alignment of new high-pressure gas line on Main Street; re-started potholing for alignment of auxiliary water supply system relocation on Mission Street; coordination regarding the second phase of PG&E power and telecommunications facilities relocation beneath temporary bridges on First and Fremont street, which is a critical path task. (Id., pp. 5-6.) Completion of franchise utility relocations at First and Minna Streets is scheduled for July 2012, and completion of all Utility Relocation work is also scheduled for July 2012. (Id., p. 7.)

In December 2011, archeological monitoring of mass excavation was begun. (Mitigation Monitoring and Reporting Quarter Ending December 2011, January 2012 [“MMRQ”], p. 2.)

The Project has incurred Utility Relocation costs of $20.008 million as of January 2012. (PR 81, p. 17.)

F. Bus Ramps.

The Bus Ramps are in the construction documents phase. (PR 81, pp. 1, 12-14 [65% Construction Documents in progress]). Completion of construction documents is scheduled for December 2012. (Id., p. 14.)

The Draft Archeological Research Design and Treatment Plan (“ARDTP”) was completed on December 22, 2011, and soil and groundwater testing was been completed. (MMRQ, p. 3). The TJPA has appraised private properties for acquisition, commenced eminent domain actions, and taken immediate possession of all properties required for Bus Ramps construction. (MMRQ, pp. 3-4.)

The Project has incurred Bus Ramps costs of $0.458 million as of January 2012. (PR 81, p. 17.)

G. Bus Storage.

The Bus Storage facility is in the construction documents phase. (PR 81, pp. 1, 3-4.) The Project has incurred Bus Storage costs of $2.733 million as of January 2012. (Id., p. 17.) The design team submitted structural mitigation plans to Caltrans for review and approval, Caltrans provided comments, and the plans are being modified. (Id., p. 4.) Completion of construction documents is scheduled for February 2013. (Id., p. 5.)
The final utility application submittal to PG&E is awaiting completion of lease agreements between TJPA and Caltrans. (MMRQ, p. 3.) The Draft ARDTP for Bus Storage will be issued in the 1st quarter of 2012. (MMRQ, p. 2.)

H. Caltrain Downtown Extension (“DTX”).

The design team is working with Caltrans and the CHSRA regarding operation and maintenance issues and the current DTX design. (PR 81, pp. 14-15). The Project has incurred DTX costs of $25,253 million as of January 2012. (Id., p. 17).

I. Program wide.

The Project has incurred Program wide (non construction and non-engineering) costs of $115,807 million as of January 2012. (PR 81, p. 17).

J. Streetscape and Open Space Improvements.

Construction documents for the first phase of streetscape and open space improvements are currently being completed under a $2.5 million design services contract entered into by the Agency in June 2011. To date, approximately $500,000 has been expended under the contract.

K. Affordable Housing.

Construction of 120 units of affordable housing is underway on a State-owned parcel referred to as Block 11A on Folsom and Essex Streets. The project began construction in December 2011 and is expected to be completed in September 2013.