Executive Summary of the Long Term Affordable Housing Enforceable Obligations

This summary is made with reference to several long term affordable housing obligations ("Affordable Housing Obligations") that are 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 ("Agency"). More particularly, this description relates to items BVHP-1, CH-16 to 21, HPSY-1, MBN-1, MBS-1, and TB-1 on the Housing section of the ROPS.

Several of the Affordable Housing Obligations are integrally related to the 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. Under those obligations, the City must:

1. develop approximately 1140 affordable housing units in the Candlestick Point-Hunters Point Shipyard Phase 2 Project as part of a Disposition and Development Agreement that is a legally binding and enforceable contract between the Agency and CP Development Co., LP executed in 2010 and that has a separate pledge of property tax revenue to cover costs associated with the affordable housing development;

2. develop approximately 1,445 affordable housing units in Mission Bay South and Mission Bay North (of which 674 units have been constructed) as part of Owner Participation Agreements that are legally binding and enforceable contracts between the Agency and FOCIL-MB, LLC executed in 1998 and that have separate pledges of property tax revenue to cover costs associated with the affordable housing development;

3. develop approximately 218 affordable housing units in the Hunters Point Shipyard Phase 1 Project as part of a Disposition and Development Agreement that is a legally binding and enforceable contract between the Agency and HPS Developer executed in 2003; and

4. develop 35% of all housing units in the Transbay Project Area as affordable housing units (estimated in the Report on the Transbay Redevelopment Plan to be 1183 affordable units) as an obligation that is imposed by state law, namely Section 5027.1 of the California Public Resources Code, and that is required under the Transbay Redevelopment Project Implementation Agreement, a legally binding and enforceable contact between the Agency and the Transbay Joint Powers Authority executed in 2006.

In addition, prior to January 1, 2011, the Agency had an existing and unsatisfied obligation to replace affordable housing that it had destroyed and never replaced. The State determined that the Agency destroyed 6,709 affordable housing units prior to 1977 and had not replaced them. Under state legislation enacted in 2000 and 2001, the state authorized the City and Agency to finance this replacement housing obligation with tax increment from redevelopment plans that would have expired or otherwise restricted the availability of tax increment. Senate Bill No. 2113, Statutes 2000, chapter 661 (codified in Section 33333.7 of the California Health and Safety Code) ("SB 2113"); Senate Bill No. 211, Statutes 2001, chapter 741, section 7 (codified in Section 33333.8 of the Health and Safety Code) ("SB 211").
Exhibit C

Under SB 2113 and SB 211, the City and Agency have obtained tax increment funding from various Project Areas (India Basin, Hunters Point, Golden Gateway, Rincon-Point South Beach, Western Addition A-2, and Yerba Buena Center) to assist in the development of almost 900 replacement housing units located across the City, leaving approximately 5800 housing units to be replaced.

The obligation to replace the remaining units is imposed by state law under Sections 33413 (a), 33333.7, and 33333.8 of the Health and Safety Code. Furthermore, the amount of property tax revenue necessary to construct the replacement units is an amount “owing to the Low and Moderate Income Housing Fund [LMIHF],” which had not been received by applicable dates established in AB 26. Section 34171 (d) (1) (G). Under the terms of AB 26, the replacement of the remaining 5,800 affordable units is a continuing obligation of the successor agency that requires the future allocation of property tax revenue, subject to approval of the City's Oversight Board.
Summary of the Long Term Affordable Housing Enforceable Obligations

Introduction: AB 26 Does Not Prevent a Successor Agency from Fulfilling Housing Obligations.

ABx1 26 (“AB 26”) defines a successor agency’s enforceable obligations in seven broad categories, several of which are significant for purposes of recognizing affordable housing obligations that continue after dissolution of a redevelopment agency. Those categories of enforceable obligations include:

- “obligations imposed by state law,”
- “any legally binding and enforceable agreement,”
- “amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of the effective date [of AB 26]” if “the repayment schedule is approved by the oversight board.”

Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (the “Agency”) listed several long term affordable housing obligations (“Affordable Housing Obligations”) on its Enforceable Obligation Payment Schedule (“EOPS”) and, prior to the EOPS, had listed them on its Statement of Indebtedness (“SOI”). The CRL establishes that the total amount of tax increment necessary to fulfill the CRL’s affordable housing obligations becomes an “indebtedness” to the redevelopment agency’s LMIHF. The SOI is an important measure of the successor agency’s “enforceable obligations” related to affordable housing. Under Section 33675, the Agency prepared and submitted the SOI to the “county auditor,” i.e. City Controller. The SOI “constitutes prima facie evidence of the loans, advances, or indebtedness of the agency” that the county auditor may dispute within thirty days of the SOI’s submission. Section 33675 (h). In its most recent SOI, the Agency listed, among other things, the amount of property tax revenue required to be deposited in the Low and Moderate Income Housing Fund to fulfill each of the Agency’s Affordable Housing Obligations that are described in this Summary. Under AB 26 and the Supreme Court’s decision in Matosantos v. California Redevelopment Assoc., the SOI expires and will have no further effect on May 1, 2012 when the Recognized Obligation Payment Schedule (ROPS) replaces it. Section 34177 (a)(3).

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1 Cal. Health & Safety Code, § 34171 (d) (1).
2 All statutory references are to the California Health and Safety Code unless otherwise specified.
All of these Affordable Housing Obligations are imposed by either the Community Redevelopment Law (“CRL”) or other state law and constitute payments owing to the Low and Moderate Income Housing Fund (“LMIHF”). Although AB 26 dissolved redevelopment agencies, it did not repeal all provisions of the Community Redevelopment Law. Rather, it transferred to successor agencies the CRL authority and obligations that it does not repeal, restrict, or revise. Section 34173 (b). Furthermore, some of the Affordable Housing Obligations are required under legally binding and enforceable agreements. Significantly, the Agency incurred all of these Affordable Housing Obligations prior to the effective date of AB 26 and prior to January 1, 2011.

The minimum affordable housing obligations of the CRL include the “[t]he obligation to provide replacement housing pursuant to Section 33413 and other similar and related statutes and ordinances.” Section 33333.8 (a)(1)(E). Replacement housing must be provided when an agency has destroyed affordable housing as part of a redevelopment project. Section 33413 (a). This housing obligation survives the expiration of redevelopment plans, the termination of projects, and other limits that would impede an agency’s compliance with these obligations. Section 33333.8 (a). Indeed, a local jurisdiction may not terminate “a redevelopment project area if the [redevelopment] agency has not complied with its affordable housing obligations.” Id. AB 26 did not repeal this affordable housing obligation.

In dissolving redevelopment agencies, AB 26 first suspended their authority to incur new debts and obligations. Section 34163 (c) (4) states that redevelopment agencies, prior to dissolution, did not have the authority to increase deposits to the LMIHF “beyond the minimum level that applied to it as of January 1, 2011.” [emphasis added] Section 34163 (c) (5) states that agencies were not authorized to transfer funds out of the LMIHF “except to meet the minimum housing-related obligations that existed as of January 1, 2011.” [emphasis added] These restrictions on deposits to the LMIHF, which may also limit successor agencies’ activities, do not affect the “minimum level” of LMIHF deposits and the “minimum housing-related obligations” that existed prior to January 1, 2011. In other words, successor agencies may increase deposits to, and expend funds from, the LMIHF for the purpose of fulfilling pre-existing housing obligations.\(^3\)

As of January 1, 2011, the Agency had already incurred the Affordable Housing Obligations. As will be described below, these obligations are part of legally binding and enforceable contracts and state-imposed obligations that survive the adoption of AB 26 and that continue at least until the oversight board has had an opportunity to determine whether the obligation should be “terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities,” Section 34181(e), or approves a “repayment schedule” associated with the housing obligation.

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\(^3\) In light of these pre-existing housing obligations that require the development of future affordable housing projects, the Agency, prior to the effective date of AB 26, issued bonds to fulfill these obligations and has unspent bond proceeds remaining in the Low and Moderate Income Housing Fund. These remaining funds are necessary to fulfill those obligations, even though some of the funds may not have yet been contractually obligated. Accordingly, all such bond proceeds are encumbered for purposes of AB 26.
1. The Affordable Housing Production Requirement of the Disposition and Development Agreement for Candlestick Point-Hunters Point Shipyard Phase 2 is a Legally Binding and Enforceable Agreement.

The housing obligation for this project is listed in row BVHP-1 of the ROPS. The Disposition and Development Agreement for Candlestick Point-Hunters Point Shipyard Phase 2 (Phase 2 DDA) obligated the Redevelopment Agency to build approximately 1,140 affordable housing units on land that the Developer will prepare for development. See Below-Market Rate Housing Plan, Exhibit F to Phase 2 DDA (“Housing Plan”). The Phase 2 DDA also includes an attached financing plan (the “Financing Plan”) that describes how the entire project will be financed, including the pledge of property tax increment revenues from the project for affordable housing. Concurrently with the approval of the Phase 2 DDA, the City and the Agency entered into a tax allocation pledge agreement (the “Pledge Agreement”), which is attached to the Phase 2 DDA and provides for the pledge of tax increment for affordable housing. The master developer is a third party beneficiary of this agreement with enforcement rights. The Phase 2 DDA and the Pledge Agreement are legally binding and enforceable agreements.

Under the Phase 2 DDA and the Housing Plan, the Developer must prepare “building ready” land by remediating, grading and installing the infrastructure for the residential development within the project site. The parties identified certain lots for use as the affordable housing lots and other lots for use as the market rate housing lots. (See Exhibit F-B to the Housing Plan.) The market rate lots will include specified inclusionary below market rate housing and workforce housing. But Housing Increment will not be used to subsidize these inclusionary or workforce housing units. (See section 3.2 and 3.3 of the Housing Plan.) The parties recognized the importance of integrating and simultaneously developing the market rate and affordable housing. Accordingly, the affordable housing lots were selected with care to ensure that the affordable housing lots would be mixed into, and spread throughout, the Phase 2 project site and would be completed as Housing Increment becomes available, without leaving undeveloped holes in the project areas that could undermine the success of the overall project or deflate the value of surrounding properties.

The Agency committed to build approximately 1,140 affordable housing units on the affordable housing lots, using the Housing Increment. This commitment to build affordable housing arises as and when Housing Increment becomes available, and the Agency agreed to use good faith efforts to cause the completion of the Agency affordable housing as soon as reasonably possible to the extent of available funding. (See section 4 of the Housing Plan.)

A critical component of the project is the reconstruction of an existing public housing facility known as the Alice Griffith Housing Development ("Alice Griffith"), currently owned and operated by the San Francisco Housing Authority. As set forth in the Phase 2 DDA, the Alice Griffith Developer, a partnership between the Developer and an affordable housing developer, is obligated to replace all of the existing 256 residential units in Alice Griffith, which is greatly in need of replacement, and complete an additional 248 affordable units. As described in the Housing Plan, these units will be located on parts of the existing site and adjacent sites, and integrated into the overall development as part of the larger mixed-income development. In 2011, the U.S. Department of Housing and Urban Development awarded the Alice Griffith
replacement project a $30,500,000 grant to fund the vertical development of the Alice Griffith replacement projects, which funds are expendable for construction following the successful remediation and infrastructure development planned as part of the Phase 2 project. Without the tax increment financing anticipated under the Phase 2 DDA, development of Alice Griffith and use of this federal grant may be significantly delayed or otherwise impeded.

The Phase 2 DDA, including the Phase 2 Financing Plan, requires that all of the Housing Increment generated within the project site be used for the development of affordable housing units on the project site, including the Alice Griffith replacement project. The Agency committed to use the Housing Increment to build affordable housing units in furtherance of its affordable housing obligations under the CRL. (See sections 3.4(b) and (c) of the Phase 2 Financing Plan; "the Agency will use the . . . Housing Increment exclusively to satisfy the Agency Affordable Housing Costs . . . in compliance with section 33334.2 of the CRL"). Under section 1.1(b) of the Phase 2 Financing Plan, the Agency agreed "to take all actions reasonably necessary" to provide Housing Increment for the development of the affordable housing units, including the Alice Griffith replacement units. Under section 3.1(b)(ii) of the Phase 2 Financing Plan, the Agency further agreed to:

- budget the expenditure of the expected Housing Increment only to: (A) pay debt service due in the next Agency Fiscal Year on any tax allocation debt issued or to be issued to finance its affordable housing obligations under the Below-Market Rate Housing Plan; (B) pay costs incurred in meeting its affordable housing obligations under the Below-Market Rate Housing Plan; (C) repay the City-wide Housing Advance; and (D) distribute otherwise as provided in Section 3.4(a)(ii).

Due to the importance of the Alice Griffith project, the Agency required that the Alice Griffith Developer complete this project during the first major phase of development. (See section 5 of the Housing Plan.) But due to the significant subsidies required to build this project and the lack of property tax increment from the Phase 2 project site at this early stage of development, the Agency agreed to finance some of the costs with property tax increment generated outside of the Phase 2 project site (the “City-wide Housing Advance”). Under the Phase 2 Financing Plan, if the Phase 2 project site generates any net available tax increment that is not required to pay for public infrastructure and other public improvements, then this excess property tax increment will be used to repay the Agency for the City-wide Housing Advance. Section 3.4(a)(ii) of the Phase 2 Financing Plan establishes the following order of priority for the Housing Increment: first, to all predevelopment and development costs of Alice Griffith, second, to pay back the City-wide Housing Advance, third, to pay the Agency's costs of its affordable housing obligations, and fourth, to pay the Developer's unreimbursed development costs of Alice Griffith.

The Agency's obligation to make the City-wide Housing Advance is unconditional, to the extent of available property tax increment from other project areas, and is a necessary component to the completion of the Alice Griffith replacement project. But the Phase 2 Financing Plan makes clear that the Agency would not be willing to make the City-wide Housing Advance unless the Agency had the right to pay those funds back when Housing Increment from the Phase 2 project site becomes available to do so.
In sum, the Phase 2 DDA, including the Housing Plan, includes specific enforceable obligations relating to the completion of affordable housing on the Phase 2 project site, and these obligations were entered into by the Agency, the City and the Developer in furtherance of, and in compliance with, the CRL. The Developer agreed to build all of the necessary infrastructure and affordable housing lots, and working with an affordable housing partner, agreed to build the Alice Griffith replacement project. The Agency agreed to build approximately 1,140 Agency affordable housing units, provide an advance to subsidize the Alice Griffith replacement project, and to pledge all of the Housing Increment for the Alice Griffith replacement project and the Agency affordable units. The Agency further agreed to issue debt to finance these costs, as described in Section II.B.3 above and supported by the Tax Allocation Pledge Agreement.

2 The Affordable Housing Production Requirement of the Owner Participation Agreements for Mission Bay North and Mission Bay South are Legally Binding and Enforceable Agreements.

The housing obligations for these projects are listed in rows MBN-1 and MBS-1 of the ROPS. In November 1998, the Agency and Catellus Development Corporation (“Owner”) entered into two separate Owner Participation Agreements for the Mission Bay North and Mission Bay South Redevelopment Projects (“OPAs”), which included Financing Plans requiring the Agency to spend housing increment for affordable housing. Concurrently with the approval of the OPAs, the City and the Agency entered into tax allocation pledge agreements (the “Tax Allocation Pledge Agreements”), which provide for the pledge of tax increment for infrastructure and affordable housing, and which provide that the Owner is a third party beneficiary of the agreements with enforceable rights.

Under the OPAs and the Housing Programs (Attachment C to the OPAs), the Owner must transfer up to 14 acres of "building ready" land that has been remediated (in terms of hazardous materials), graded, and served by Infrastructure, for the development of affordable housing within the project sites. The parties identified specific parcels for the affordable housing. The Agency may use these parcels only for Agency sponsored affordable housing units and ancillary uses consistent with "Redevelopment Requirements", which is defined to include the redevelopment plans, scope of development, design for development and Agency-approved constructions documents. (See Sections 3.4 of the Mission Bay South Housing Program at page 21 and Section 4.4 of the Mission Bay North Housing Program at page 29.)

The Owner's market rate residential developments, in Mission Bay North but not Mission Bay South, include inclusionary below market rate housing that will not receive any subsidies

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1 For purposes of analyzing the enforceability of the housing obligations, the OPAs and related documents for Mission Bay North and Mission Bay South are identical.

5 The Financing Plan declares that it “is intended to create an “indebtedness of the Agency under Section 33670(b) of the Redevelopment Law which is secured by an Agency pledge of Net Available Increment, and, under the Tax Allocation Agreement, the City has acknowledged that the Agency’s obligations hereunder are subject to repayment from an ongoing Agency pledge of Net Available Increment” (Section 2.C.i).

6 See Exhibit G, Approved Sites, to the Mission Bay North Housing Program; Exhibit F to the Mission Bay South Housing Program.
Exhibit C

from the Housing Increment. The parties recognized the importance of integrating and simultaneously developing the market rate and affordable housing. Accordingly, the Agency and Owner selected affordable housing lots throughout the residential districts of the project sites. The Agency is obligated to develop the affordable housing lots as Housing Increment becomes available. The purpose of this deal structure is to limit the number of undeveloped parcels that could adversely affect the value of surrounding private properties. The Financing Plans require the Agency to use the Housing Increment generated within the project sites to finance the development of affordable housing. (See Section 4.B of the Financing Plans.) If there is any Net Available Increment that is not needed to pay debt service on Infrastructure financing or to reimburse the Owner for Infrastructure costs, then the Agency must use that increment (the "Excess Increment") for affordable housing development.

The Agency hereby agrees to use Housing Increment and Agency Excess Increment\(^7\) for the payment of the costs of predevelopment, development or construction of Affordable Housing Units developed or to be developed by the Agency or Qualifying Housing Developers within the North and South Plan Areas as provided herein and in the Tax Allocation Agreement, to the extent such Housing Increment and Agency Excess Increment is necessary to finance the development of such units in accordance with the Housing Program and to obtain the necessary appropriation from the Board of Supervisors under the Tax Allocation Agreement for such purposes. (Section 4.B.iii of Mission Bay North Financing Plan at page 13 and Mission Bay South Financing Plan at pages 12-3.) (See also Section 2.C.v. of Mission Bay North Financing Plan at page 7.\(^8\) “[T]he Agency hereby covenants to expend or encumber Housing Increment in a manner so as to avoid the sanctions [in the CRL relating to an agency's failure to spend housing funds in a timely manner].”)

In sum, the OPAs, including the Housing Programs, create specific enforceable obligations relating to the completion of affordable housing on the project site, and the Agency and the Owner agreed to these obligations to satisfy the requirements of the CRL. AB 26 expressly includes within the definition of enforceable obligations "payments required by ...obligations imposed by state law." (See section 34170(d)(a)(C).) The Owner agreed to build all of the necessary Infrastructure and provide lots ready for the development of affordable housing. The Agency agreed to build approximately 1,445 Agency affordable housing units and pledged all of the Housing Increment and the Excess Increment for affordable housing development. The Agency further agreed to issue debt to finance these costs, as described in Section II.B above and supported by the Tax Allocation Pledge Agreements. To date, the Agency has used the Housing Increment to complete 674 units of affordable housing and to put another 350 units in the predevelopment or construction phase.

\(^7\) After the Fourth Amendment to the Mission Bay North OPA, all Excess Increment, not just Agency Excess Increment, became available for the Housing Programs.

\(^8\) Section 2.C.v. of Mission Bay South Financing Plan at page 6.
3. The Affordable Housing Production Requirement of the Disposition and Development Agreement for Phase 1 of the Hunters Point Shipyard is a Legally Binding and Enforceable Agreement.

The housing obligation for this project is listed in row HPSY-1 of the ROPS. The HPS1 DDA obligates the master developer to construct infrastructure and prepare Phase 1 parcels for vertical development in accordance with an Infrastructure Plan and Schedule of Performance. The HPS1 DDA states that once the parcels are improved and subdivided into marketable lots, they will either be sold at fair market value or “retained by the Agency for the ‘vertical development’ of affordable housing and for community economic development.” HPS1 DDA at page 3.

The Phase 1 DDA, including the attached “Affordable Housing Program,” obligates the Agency to build approximately two hundred eighteen (218) affordable housing units on parcels designated as “Agency Housing Parcels”. The Fifth Amendment to the Phase 1 DDA, executed in October 2009, identifies the location of those parcels. The Phase 1 DDA requires the Developer to complete and prepare the Agency Housing Parcels for vertical development, and much of this work has been completed or substantially completed. The Phase 1 DDA provides for the development of approximately 1,498 residential units, with not less than twenty-seven percent (27%) affordable to very low-, low- and moderate-income residents. In addition to the two hundred eighteen (218) Agency-constructed Affordable Housing Units, the other affordable units will be inclusionary units constructed by vertical developers (comprising fifteen percent (15%) of the total units constructed by vertical developers in Phase 1).

Under the Phase 1 DDA, the Agency agreed to use property tax increment to develop the Agency Housing Parcels (not the inclusionary units) for affordable housing as required under the CRL. This obligation, set forth in Section 11 of the Phase 1 DDA, requires that, once sufficient property tax increment becomes available to fund construction, the Agency must start construction on the Agency affordable housing units. Specifically, Section 11 states that:

…the Agency shall first Commence Construction of its fifty (50) Agency Affordable Housing Units on Block 54. Thereafter…as Shipyard Tax Increment funding becomes available, the Agency shall, in an effort to ensure continuity of Lot development during the vertical construction phase, endeavor to develop its Agency Housing Parcels on a schedule that considers issues of adjacency and therefore complements Developer’s, and any Affiliate of Developer’s or any Community Developer’s, schedule for construction on its various lots.

The Agency’s development of affordable housing is part of the bargain between the parties and not merely an optional undertaking by the Agency. Under the Phase 1 DDA, the Agency has the obligation, not merely the right, to construct affordable housing. Moreover, the Agency is required to construct such housing in a specific order according to certain standards. Not only must the Agency construct the first block of affordable housing on a specific parcel, but the Agency’s subsequent housing development is required to take into account adjacencies so as to “complement” Developer’s market rate development. Failure of the Agency to develop these lots could result in vacant lots within developed project areas, devaluing the improved properties
and destabilizing the economic underpinnings of the Phase 1 Project. In short, the Agency's failure to develop the affordable housing as promised could deprive the Developer of the benefit of its legally enforceable bargain with the Agency.

The City’s continued obligation to construct this housing is supported by the language of AB 26, which defines an enforceable obligation to include “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.” (Section 34167(d)(5), 34171(d)(1)(E)). Under the Phase 1 DDA, the City, as successor agency, has an enforceable obligation to develop affordable housing in the manner specified in Section 11 of the agreement. The City’s failure to do so is a default for which the Developer has the right to, among other things, seek specific performance. (See Section 13.5(c) Phase 1 DDA.)

The passage of AB 26 does not change any of the relevant facts underlying the contractual agreement between the parties. AB 26 requires that the funds (i.e., the tax increment funds) from the City to meet these contractual obligations continue. For Phase 1 (in contrast to Phase 2) even though there is no separate tax allocation pledge agreement, the Phase 1 DDA itself is an enforceable obligation under AB 26 that encumbers the future property tax increment required to fulfill this obligation. Because the Phase 1 DDA contractually obligated these funds for the development of affordable housing on the Agency Housing Lots, the City, as the Agency’s successor, is obliged to use these funds to meet its housing obligations, the same way that it must use former tax increment funds to fulfill all enforceable obligations. Any future tax increment from Phase 1 not used to fulfill enforceable obligations or pay administrative costs as set forth in AB 26 will be distributed to the taxing agencies in accordance with AB 26.

AB 26 expressly preserves enforceable obligations that must draw on future property tax revenues (former tax increment), at least until the oversight board makes a decision about continuing the obligation under Section 34177 (e).

4 The Affordable Housing Production Requirement for Transbay is an Obligation Imposed by State Law.

The housing obligation for Transbay is listed in row TB-1 of the ROPS. AB 26 defines enforceable obligations to include “obligations imposed by state law.” Section 34171(d)(1)(C). Section 5027.1 of the Cal. Public Resources Code requires that any redevelopment plan providing for the financing, in whole or in part, of the Transbay Terminal demolition and reconstruction must ensure the development of affordable housing for low and moderate income households. In particular, this state law mandates that 25 percent 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 percent must be restricted to moderate income households (“Transbay Affordable Housing Program”). These affordability restrictions must remain in effect for 45 years for ownership units and 55 years for rental units.

In 2005 and 2006, the Board of Supervisors approved, by Ordinance Nos. 124-05 and 99-06 respectively, the Redevelopment Plan for the Transbay Redevelopment Project Area (“Transbay Plan”). The Transbay Plan provided for a financing plan to construct a new terminal. It requires, among other things, the dedication of tax increment generated from certain parcels
“to pay costs associated with the construction and design of the Transbay Terminal.” Section 5.7 of Transbay Plan at page 32. The Transbay Plan reiterated the affordable housing production requirement of Section 5027.1 of the Public Resources Code and the Report on the Transbay Plan estimated that the number of affordable units necessary to fulfill this obligation was 1183 units. Also in 2006, the Agency and Transbay Joint Powers Authority (“TJPA”) executed an Implementation Agreement whereby the Agency agreed to “execute all activities related to the implementation of the Transbay Redevelopment Plan . . . . 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).)

In 2008, the City, the Agency, and the TJPA entered into a Tax Increment Allocation and Sales Proceeds Pledge Agreement (Jan. 31, 2008) implementing the Transbay Plan’s financing plan and committing the tax increment from certain parcels for the costs of the terminal construction (“Transbay Pledge Agreement”). See also Ordinance No. 99-06 (May 19, 2006). The Transbay Pledge Agreement pledges the tax increment from certain parcels in the Project Area to the TJPA so that it “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.” Transbay Pledge Agreement, Section 1 at page 3. In reliance on the Transbay Pledge Agreement and related agreements, the TJPA has taken substantial steps to implement the Transbay Terminal Project, including demolition of the old terminal building. The Transbay Pledge Agreement is an enforceable obligation under AB 26 and will provide financing in part for the terminal project.

Section 5027.1 of the Public Resources Code imposed the obligation for the Transbay Affordable Housing Program if the Transbay Plan provided financing for the Transbay Terminal Center Project. Subsequent to enactment of this state law, the City approved the Transbay Plan with authorization for this financing and the City, Agency and TJPA executed an agreement pledging tax increment to the Project. These actions triggered the statutory obligation for the Transbay Affordable Housing Program.

5 **The Redevelopment Agency Had an Unfulfilled Replacement Housing Obligation That Is Imposed by State Law and Constitutes an Amount Owing to the Low and Moderate Income Housing Fund.**

These housing obligations are listed in rows CH-16 to CH-21 of the ROPS. Since 1977, the Community Redevelopment Law has required the replacement of lower income housing that is destroyed or removed from the housing market as part of a redevelopment project. Cal. Health & Safety Code § 33413 (a). AB 26 did not repeal this requirement if the obligation had been incurred, i.e. the affordable housing had been destroyed, prior to its effective date. In 2003, the California Department of Housing and Community Development certified that the Agency had destroyed 6709 affordable housing units prior to 1977 and had not replaced them (the “Agency’s Replacement Housing Obligation”). Notably, the vast majority of lost affordable units were from three project areas: Yerba Buena Center (3217 units), Western Addition A-1 (3208 units) and Golden Gateway (1301 units).

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Exhibit C

In 2000, the state legislature enacted legislation providing San Francisco with the authority to finance this replacement housing. Senate Bill No. 2113, Statutes 2000, chapter 661 (codified in Section 33333.7 of the California Health and Safety Code) (“SB 2113”). The legislature found that the “Redevelopment Agency of the City and County of San Francisco, due to its unique housing situation and net loss of affordable housing units in [older] project areas, wishes, to the greatest extent feasible, to replace these lost units according to the formulas set forth in Section 33413 of the Health and Safety Code.” (Statutes 2000, Chapter 661 § 1 (b)). SB 2113, as special legislation, authorized only San Francisco to extend the tax increment authority of older project areas for the exclusive purpose of receiving tax increment and incurring indebtedness to replace the destroyed affordable housing in San Francisco.

In 2001, the state legislature enacted additional legislation that required every redevelopment agency to fulfill certain affordable housing obligations irrespective of the termination of a redevelopment plan or other limits in a plan that might prevent the funding and fulfillment of the housing obligations. Senate Bill No. 211, Statutes 2001, chapter 741, section 7 (codified in Section 33333.8 of the Health and Safety Code) (“SB 211”). These housing obligations include “the obligation to provide replacement housing pursuant to subdivision (a) of Section 33413, Article 9 (commencing with Section 33410), and other similar and related statutes.” Section 33333.8(a) (1) (E). Section 33333.8 applies to the Agency’s Replacement Housing Obligation, which is based on the replacement housing obligation of Section 33413 (a). Collectively, Sections 33413, 33333.7 and 33333.8 established the “obligations imposed by state law” that are the “enforceable obligations under AB 26. Section 34171 (d) (1) (C).

The Agency has relied on both SB 2113 and SB 211 to obtain tax increment funding from India Basin, Hunters Point, Golden Gateway, Rincon-Point South Beach, Western Addition A-2, and Yerba Buena Center (“Project Areas”) to assist in the development of almost 900 replacement housing units located across the City, leaving approximately 5800 housing units to be replaced. With the exception of Rincon Point-South Beach, all of the redevelopment plans for these Project Areas have expired.

The City has adopted several ordinances acknowledging the Agency’s Replacement Housing Obligation:

- Ordinance No. 15-05 (extending time limits for establishment of loans, advance, and indebtedness applicable to the Embarcadero-Lower Market (Golden Gateway) Redevelopment Plan, the Hunters Point Redevelopment Plan, and the India Basin Redevelopment Plan);

- Ordinances Nos. 115-07 and 201-07 (extending time limits for the Redevelopment Agency’s receipt of tax increment and suspending both the limit of total outstanding indebtedness and the limit on tax increment revenue under the Rincon Point-South Beach Redevelopment Plan);
• Ordinance No. 316-08 (extending time limits for issuing and repaying debt and suspending limits on the total tax increment revenues under the Western Addition A-2 Redevelopment Plan); and

• Ordinance No. 256-09 (extending time limits for issuing and repaying debt and suspending limits on the total tax increment revenues under the Yerba Buena Center Redevelopment Plan).

All of these ordinances addressing the Agency Replacement Housing Obligation were in effect prior to January 1, 2011 and thus constitute minimum housing-related obligations that the City, as successor agency, assumes under AB 26, subject to oversight board review. The SOI lists the Agency’s Replacement Housing Obligation as an indebtedness for each of the affected project areas and provides an estimate of the amount of property tax revenue necessary to fulfill these enforceable obligations.

In sum, the replacement of the remaining 5800 affordable units is a continuing obligation of the successor agency requiring the future allocation of property tax revenue under the terms of AB 26. The obligation to replace the affordable housing is imposed by state law under Sections 33413 (a), 33333.7, and 33333.8 of the Health and Safety Code. Furthermore, the amount of property tax revenue necessary to construct the replacement units is an amount “owing to the Low and Moderate Income Housing Fund [LMIHF],” which had not been paid as of the effective date of AB 26. Section 34171 (d) (1) (G). Nonetheless, the amount of property tax revenue allocated for replacement housing in a particular time period covered by a ROPS is subject to the approval of the Oversight Board. Accordingly, the Oversight Board will have continuing authority to determine the appropriate amount of property tax revenue for replacement housing when it reviews and approves future ROPS.