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**AC TRANSIT DISTRICT**  
**Board of Directors**  
Executive Summary

**GM Memo No. 09-293**

Meeting Date: December 9, 2009

**Committees:**

Planning Committee	<input type="checkbox"/>	Finance and Audit Committee	<input checked="" type="checkbox"/>
External Affairs Committee	<input type="checkbox"/>	Operations Committee	<input type="checkbox"/>
Rider Complaint Committee	<input type="checkbox"/>	Para transit Committee	<input type="checkbox"/>
<b>Board of Directors</b>	<input type="checkbox"/>	<b>Financing Corporation</b>	<input type="checkbox"/>

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**SUBJECT:** Consider Recommending the Adoption of Resolution No. 09-062 Approving the Third Amended and Restated Fiscal Agreement Regarding Fremont Industrial Redevelopment Project

**RECOMMENDED ACTION:**

Information Only     Briefing Item     Recommended Motion

**Recommend the Board adopt Resolution No. 09-062**

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**Fiscal Impact:** No immediate impact. Receipt of increased revenues deferred until the late 2020s or early 2030s due to redevelopment improvements in the project area.

**Background/Discussion:**

AC Transit, together with a number of other governmental agencies and special districts, has been requested by the Redevelopment Agency of the City of Fremont to enter into a Third Amended and Restated Fiscal Agreement Regarding Fremont Industrial Redevelopment Project (the Third Amendment). See Attachment 1. The purpose of the Third Amendment is to increase from \$400 million to \$1.5 billion the limit on the tax increment revenue from the Project Area (generally, the Auto Mall Parkway and Fremont Boulevard interchange area and three Historic District Project Areas). These improvements include transit improvements, as indicated in the list of improvements set out in Attachment 2.

This Third Amendment does not affect the existing amount of revenues received from this portion of the City of Fremont since, under the previous amendments approved by the District and the other taxing entities, a contractual formula has been agreed to that exceeds what the District would otherwise receive under the Redevelopment Act. The District presently receives approximately \$540,000 from the Project Area each year and this amount will continue to be received during the life of the Project Area – late 2020/early 2030. Upon expiration of the Project Area, then the increased tax incremental value from the improvements will be available to the District. See Attachment 3.

**Prior Relevant Board Actions/Policies:**

The District has participated in the original 1993 Fiscal Agreement and the first (1995) and second (1999) amended and restated agreements.

**Attachments:**

1. The Proposed Third Amended and Restated Fiscal Agreement
2. List of Proposed Improvements in the Project Area
3. Spread Sheet of Tax Increment Values during the life of the Project Area
4. Draft Resolution No. 09-062

**Approved by:** Mary V. King, General Manager  
**Prepared by:** Kenneth C. Scheidig, General Counsel  
Lewis G. Clinton, Chief Financial Officer  
**Date Prepared:** December 4 2009

**Final Execution**

THIRD AMENDED AND RESTATED  
FISCAL AGREEMENT  
REGARDING  
FREMONT INDUSTRIAL REDEVELOPMENT PROJECT

Initially Dated as of January 12, 1993

First Amended and Restated as of November 1, 1995

Second Amended and Restated as of March 1, 1999

Third Amended and Restated as of September 1, 2009

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THIRD AMENDED AND RESTATED  
FISCAL AGREEMENT REGARDING  
FREMONT INDUSTRIAL REDEVELOPMENT PROJECT

This Agreement, initially dated as of January 12, 1993, as previously amended and restated as of November 1, 1995 and March 1, 1999, and as hereby further fully amended and restated as of September 1, 2009, is entered into by and among the Redevelopment Agency of the City of Fremont, the City of Fremont, the County of Alameda, the AC Transit District, the Alameda County Flood Control District, the Alameda County Library District, the Alameda County Mosquito Abatement District, the Alameda County Resource Conservation District, the Alameda County Water District, the Bay Area Air Quality Management District, the Bay Area Rapid Transit District, the East Bay Regional Park District, and the Washington Hospital District, on the basis of the following facts, understandings, and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The parties intend to refer to those definitions in connection with the use thereof in this Agreement.

B. In 1983, the City adopted the Original Plan and established the Project Area for the primary purpose of assisting in the construction, reconstruction, and improvement of the Interchanges. Minor amendments to the Original Plan were adopted by the City in 1989 and 1992.

C. In 1993, the Agency prepared and the City Council of the City adopted the 1993 Amended Plan which expanded the Agency's financial resources to assist in financing the Interchange Improvement Costs. As of the Third Amendment and Restatement of this Agreement, through the financial resources made available by the 1993 Amended Plan and the 1998 Amended Plan, the Auto Mall Parkway and Fremont Boulevard interchange improvements have been completed and fully funded, physical construction of the Dixon Landing Road interchange improvements has been substantially completed (while certain funding and administrative tasks remain to be completed), and construction of the Mission Boulevard interchange improvements is underway.

D. In July 1998, the City adopted the 1998 Amended Plan, the general purposes of which were to: (1) authorize the Agency to finance a limited and specified set of improvements in the Project Area in addition to the Interchanges (namely, a business/learning center, a transit terminal, and widening of a portion of Fremont Boulevard); (2) extend specified financial deadlines; and (3) merge the Project Area with the City's three Historic District Project Areas to form the Merged Project Area for purposes of pooling Claimed Tax Increment Revenue for partial use in the three Historic District Project Areas as permitted by Health and Safety Code Section 33485 *et seq.* In connection with the 1998 Amended Plan, the parties entered into the Second Amendment and Restatement of this Agreement.

E. The Agency has prepared and the City Council will consider for execution the 2010 Amended Plan, a primary purpose of which is to increase the limit on tax increment revenue from the Project Area portion of the Merged Project Area that may be claimed by the Agency from \$400 million to \$1.5 billion in order to enable the Agency to complete the program of redevelopment for the Merged Project Area.

F. Pursuant to (1) Section 16 of Article XVI of the Constitution of the State of California, (2) Health and Safety Code Section 33670 *et seq.*, and (3) the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan, the Agency is entitled to receive Potential Tax Increment Revenue from the Project Area portion of the Merged Project Area to pay the principal of and interest on loans of, monies advanced to, or indebtedness incurred by, the Agency to finance, in whole or in part, redevelopment in accordance with the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan.

G. Pursuant to the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan, the Agency is not entitled to claim or to have allocated to it the Inflation Allocation from the Project Area portion of the Merged Project. The Inflation Allocation is instead allocated among the affected taxing entities, including the Participating Entities, as normal property taxes. Consequently, the Potential Tax Increment Revenue from the Project Area portion of the Merged Project Area that is subject to Agency claim pursuant to the 1993 Amended Plan, the 1998 Amended Plan and the 2010 Amended Plan excludes the Inflation Allocation.

H. The Participating Entities are affected taxing entities with jurisdiction over property located within the Project Area. The Participating Entities had concern over the potential negative impact of tax increment financing pursuant to the 1993 Amended Plan on their respective financial situations.

I. As a result, a fiscal review committee was convened for the 1993 Amended Plan pursuant to Health and Safety Code Section 33353 (then in effect) and meetings were held that were attended by the Agency and other affected taxing entities.

J. The fiscal review committee determined, and the Agency found that, but for the fiscal mitigation measures set forth in this Agreement as initially executed, the redevelopment program undertaken pursuant to the 1993 Amended Plan would create a financial burden or detriment as defined in Health and Safety Code Section 33012 (then in effect) by requiring an increase in the level of Participating Entities' services, and by causing a loss of property tax revenues from changes in ownership and new construction which might have been received by the Participating Entities if the 1993 Amended Plan were not adopted.

K. Following initial negotiation, approval, and execution of this Agreement, the County Auditor-Controller implemented a methodology for allocating certain property taxes to the ERAF Fund as contributions on behalf of certain Participating Entities (hereafter defined as the "ERAF-impacted Entities"), thereby reducing the proportionate share of property taxes (commonly referred to as the "AB8 Factors") allocable to those Participating Entities and additionally deducting a fixed annual contribution to the ERAF Fund from those Participating

Entities, in order to achieve the required aggregate contribution to the ERAF Fund attributable to property taxes from the Project Area without adversely affecting the constitutionally and statutorily protected amount of Potential Tax Increment Revenue allocated to the Agency. The methodology implemented by the County Auditor-Controller had the potential effect of reducing the payments of Claimed Tax Increment by the Agency to the County and certain Non-County Participants pursuant to Section 4.1 and 4.2 below the payment amounts intended by the parties when the Agreement was initially negotiated, approved, and executed. Through a previous first amendment and restatement of this Agreement dated as of November 1, 1995, the parties made certain clarifications to the method for determining payments to be made by the Agency to the Participating Entities pursuant to Sections 4.1 and 4.2. Those clarifications were an initial attempt to compensate for the ERAF Fund allocation methodology implemented by the County Auditor-Controller and to reestablish the Agency payments at the relative levels intended by the parties when the Agreement was initially negotiated, approved and executed.

L. In connection with consideration of the 1998 Amended Plan and the 2010 Amended Plan, the parties determined the need for further clarifications of the method for determining payments to be made by the Agency to the Participating Entities pursuant to Section 4.1 and 4.2 in order to most accurately reflect the County Auditor-Controller's ERAF Fund allocation methodology and to most accurately achieve the level of Agency payments to the Participating Entities intended by the parties when this Agreement was initially negotiated, approved and executed. To that end, the parties entered into the Second Amendment and Restatement of this Agreement as of March 1, 1999 and the Third Amendment and Restatement of this Agreement as of September 1, 2009. The clarifications of the payment determination method described in Recital K and this Recital L implement the objective of Section 33 of Chapter 699 of the Statutes of 1992, the act that created the ERAF Fund contribution requirement, that became effective after completion of negotiation and approval by the Participating Entities of the initial version of this Agreement, and that was subsequently implemented in Alameda County through the County Auditor-Controller's ERAF Fund allocation methodology system briefly described above (the "ERAF Act"). Section 33 of the ERAF Act states:

"Notwithstanding any changes made by this act in the allocation of property tax revenues between local government entities, redevelopment agencies, school districts, and community college districts, mitigation agreements entered into prior to the operative date of this act pursuant to Section 33401 and 33446 of the Health and Safety Code shall not be affected thereby, and any payments required under these agreements shall continue to be made as if there were no change in local property tax allocations pursuant to the act."

M. The purposes of the Third Amendment and Restatement of this Agreement, dated as of September 1, 2009, are to achieve the clarification of Agency payments as described in Recital L, to enable the Agency to achieve the purposes of the 2010 Amended Plan as generally described in Recitals E and N, and to continue to assure prompt, priority completion of the Project, including the Interchange improvements.

N. The redevelopment program to be implemented pursuant to the 2010 Amended Plan has regional significance and will provide regional benefits including, but not limited to, county-wide economic development and traffic circulation benefits resulting from timely improvement of the Interchanges and construction of the Irvington BART Station, and improvement of the local housing stock available at affordable housing cost to low-and moderate-income households. Through achievement of the purposes summarized in Recital E and this Recital N, the 2010 Amended Plan and the Third Amendment and Restatement of this Agreement will provide the Agency with additional financial resources and the legal authority to better achieve these regional benefits in the Merged Project Area, while maintaining and clarifying the fiscal mitigation measures for the benefit of the Participating Entities as contemplated in this Agreement as initially executed in 1993.

O. In consideration of this Agreement determining the obligations of the Agency and the City with respect to the Project, the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan, the Participating Entities have foregone the right to contest the adoption of the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan.

NOW, THEREFORE, the Agency, the City, and the Participating Entities agree as follows:

ARTICLE 1  
DEFINITIONS AND EXHIBITS

Section 1.1 General Definitions. The following general definitions shall govern this Agreement:

(a) "Adjusted AB8 Factor" for a given Participating Entity for a given Fiscal Year, means:

(1) Beginning in Fiscal Year 1994-95 and continuing through and including the Final Pre-Third Amendment Fiscal Year, the percentage factor determined in accordance with the following formula:

$$\begin{array}{l} \text{Unadjusted AB8 Factor} \\ \text{for Participating Entity} \\ \text{for Fiscal Year} \end{array} \times \begin{array}{l} \text{ERAF Ratio for} \\ \text{1 - Participating Entity} \\ \text{for Fiscal Year} \end{array}$$

In turn, the "ERAF Ratio" for a given Participating Entity for a given Fiscal Year means the percentage factor shown for the Participating Entity in the "% of ERAF To Tot Rev" column of the computer spreadsheet prepared by the County Auditor-Controller for that Fiscal Year and entitled "Tax Shift to ERAF 1992-93 & 1993-94 Carry Forward." If, in any given Fiscal Year, the County Auditor-Controller no longer prepares such computer spreadsheet in substantially the same way the spreadsheet was prepared annually prior to the Second Amendment and Restatement of this Agreement, the Agency and the County shall meet with the County Auditor-Controller to establish an alternate method for determining the ERAF Ratio that achieves, as nearly as possible, the intent of this definition. By way of illustration only, Part I of



Exhibit B to this Agreement contains a sample calculation of an Adjusted AB8 Factor pursuant to this subparagraph (1); and

(2) Beginning with the Third Amendment Fiscal Year and continuing through and including the Project Completion Fiscal Year, the percentage for the given Participating Entity shown in Column (4) of the attached Exhibit D (which represents the Adjusted AB8 Factors reported by the County as of the execution of the Third Amendment and Restatement of this Agreement). By mutually acceptable agreement of the Agency and the County, the Agency and the County may modify Column (4) of Exhibit D through an amendment to this Agreement without approval of the other Participating Entities to correct any future non-material clerical corrections or adjustments of the Adjusted AB8 Factors reported by the County. If there should occur a future material change in the Adjusted AB8 Factors reported by the County from one Fiscal Year to the next, then, upon the request of either the Agency or the County, the Agency and the County shall implement the procedure set forth in Section 4.8 to seek to achieve a mutually acceptable modification to Column (4) of Exhibit D for consideration of approval by all of the Participating Entities in the form of an amendment to this Agreement approved by all of the Participating Entities.

(b) "Agency" means the Redevelopment Agency of the City of Fremont, California.

(c) "Annual Report" has the meaning given in Section 2.4.

(d) "Anticipated Interchange Funds" has the meaning given in Section 2.5(a)(3).

(e) "Approved Interchange Financing Program" means a Proposed Interchange Financing Program that is approved to constitute an Approved Interchange Financing Program in accordance with the procedures set forth in Section 2.5(c) or (d).

(f) "Basic Tax Increment Revenue" means the portion of Potential Tax Increment Revenue generated from the levy of the basic one percent (1%) County-wide ad valorem property tax rate imposed in accordance with the provisions of Section 1(a) of Article XIII A of the Constitution of the State of California.

(g) "Caltrans" means the California State Department of Transportation.

(h) "Cash Flow Budget" has the meaning given in Section 2.5(a)(4).

(i) "CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and applicable state and local implementing guidelines.

(j) "City" means the City of Fremont, California.

(k) "City Sales Tax Revenue" has the meaning given in Section 2.5(a).

(l) "Claimed Tax Increment Revenue" means the portion of Potential Tax Increment Revenue that is actually claimed by the Agency and received by the Agency from the County Auditor-Controller. Section 3.1 sets forth certain parameters regarding the amount of Claimed Tax Increment Revenue that the Agency may or shall claim.

(m) "Community Redevelopment Law" means the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.).

(n) "County" means the County of Alameda, California.

(o) "County Share" means the proportionate percentage share of Basic Tax Increment Revenue that the County would receive as property taxes from the Project Area if there was no provision in the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan for the division of Potential Tax Increment Revenue to the Agency pursuant to Health and Safety Code Section 33670 et seq. and if no allocation of property taxes was made to the ERAF Fund. (Stated another way, the County Share for a given Fiscal Year equals the product of Basic Tax Increment Revenue for the Fiscal Year multiplied by the Unadjusted AB8 Factor for the County for the Fiscal Year.)

(p) "ERAF Fund" means the Educational Revenue Augmentation Fund established pursuant to Revenue and Taxation Code Section 97.03, or any similar or successor fund.

(q) "ERAF-impacted Entity" means each of the following Participating Entities: the County, the Alameda County Flood Control District, the Alameda County Library District, the Alameda County Mosquito Abatement District, the Alameda County Resource Conservation District, and the Alameda County Water District.

(r) "Education Districts" means, collectively, the Fremont Unified School District, the Fremont-Newark Community College District, and the Alameda County Superintendent of Schools.

(s) "Final Pre-Third Amendment Fiscal Year" means the final fiscal year prior to the Third Amendment Fiscal Year.

(t) "Fiscal Year" means the period commencing on July 1 and ending the following June 30.

(u) "Fixed ERAF Contribution Amount" for a given Participating Entity for a given Fiscal Year means the amount for that Participating Entity shown in Column (2) of the attached Exhibit D. The Fixed ERAF Contribution Amount represents for each Participating Entity the fixed annual contribution to the ERAF Fund that is deducted in accordance with the ERAF Fund allocation methodology implemented by the County Auditor-Controller from the property taxes the Participating Entity would otherwise receive, in order to achieve the required aggregate contribution to the ERAF Fund attributable to property taxes from the Project Area

without adversely affecting the constitutionally and statutorily protected amount of Potential Tax Increment Revenue allocated to the Agency.

(v) "Former County Agreement" means, collectively: (1) the letter dated August 17, 1983 from Charles K. McLain, on behalf of the City and Agency, to Mel Hing, County Administrator of the County; and (2) the agreement entitled "Fiscal Agreement Regarding the City of Fremont's Industrial Redevelopment Project" dated August 29, 1989, among the County, the City, and the Agency. A copy of the Former County Agreement is on file with the Agency and the County.

(w) "Funding Shortfall" has the meaning given in Section 2.5(a).

(x) "General Administrative Costs" means the Agency's reasonable costs related to accounting, reporting, statutory compliance, conduct of Agency meetings, administration of this Agreement and any other fiscal agreements entered into by the Agency, and other similar matters necessary to the general administration of the Project. General Administrative Costs do not include the Agency's costs of: (1) preparing and amending this Agreement, the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan; or (2) participating in the actual implementation of the Project, including the actual design, construction, reconstruction and improvement of the Interchanges and other improvements.

(y) "Historic District Project Areas" means, collectively, the redevelopment project areas for the Irvington, Niles, and Centerville historic districts as previously established by the City pursuant to the Community Redevelopment Law and as hereafter amended from time to time. As detailed in the 1998 Report to Council, the Agency has prepared and the City has approved (in July 1998) redevelopment plan amendments that expanded the boundaries of the Irvington and Niles project areas. The three Historic District Project Areas comprise portions of the Merged Project Area.

(z) "Housing Fund" means the Agency's Low and Moderate Income Housing Fund established pursuant to Health and Safety Code Section 33334.3, into which the Agency is required to make annual deposits pursuant to Health and Safety Code Section 33334.2.

(aa) "Housing Fund Indebtedness" has the meaning given in Section 2.6(b)(3).

(bb) "Imputed ERAF Contribution" for a given Participating Entity for a given Fiscal Year means the product of (1) the Unclaimed Tax Increment Revenue for the Fiscal Year multiplied by (2) the remainder that is determined by subtracting the Adjusted AB8 Factor from the Unadjusted AB8 Factor for the Participating Entity for the Fiscal Year. By way of illustration only, Part II of Exhibit B to this Agreement contains a sample calculation of an Imputed ERAF Contribution. The term "Imputed ERAF Contribution" has applicability only for specified Fiscal Years prior to and including the Final Pre-Third Amendment Fiscal Year, and thereafter has no further applicability.

(cc) "Independent Advisor" has the meaning given in Section 2.5(c).

(dd) "Inflation Allocation" means the portion of property taxes attributable to increases in the assessed value of the taxable property in the Project Area, as the assessed value was established by the assessment roll last equalized prior to the effective date of City Ordinance No. 1577 adopting the Original Plan, which are, or otherwise would be, calculated annually pursuant to Revenue and Taxation Code Section 110.1(f). Pursuant to the provisions of Part VII.D.3.a of the 1993 Amended Plan and the 1998 Amended Plan, and Part VII.C.3 of the 2010 Amended Plan, the Agency is expressly prohibited from claiming or having allocated to it the Inflation Allocation, with the purpose and effect that such unclaimed Inflation Allocation is instead allocated by the County Auditor-Controller to the affected taxing entities as normal property taxes.

(ee) "Interchange-Committed Tax Increment Revenue" has the meaning given in Section 2.5(a)(5).

(ff) "Interchange Financing Completion Date" means the date on which occurs the payment in full of all amounts due from the City, the Agency, and/or the Local Interchange Financing Authority to defray Interchange Improvement Costs.

(gg) "Interchange Improvement Costs" means all costs related (1) to preparation and amendment of this Agreement (as originally executed in 1993 and as first amended and restated in 1995) and the 1993 Amended Plan, and (2) to the construction, reconstruction, and improvement of the Interchanges in accordance with plans and specifications approved by Caltrans, including, without limitation, right-of-way acquisition costs, design costs, environmental assessment costs, utility relocation costs, construction costs, and the City's cost of administering its participation in the design, construction, reconstruction, and improvement of the Interchanges.

(hh) "Interchange Indebtedness" means tax allocation bonds or notes issued by the Agency or on behalf of the Agency by the Local Interchange Financing Authority, loans received by the Agency from the Local Interchange Financing Authority or any other legally authorized public or private lender, and other forms of indebtedness (with a repayment term of at least one (1) year) entered into by the Agency or the Local Interchange Financing Authority for the purpose of raising funds to pay Interchange Improvement Costs, the repayment of which is secured in whole or in part by a pledge of Claimed Tax Increment Revenue (other than the portion of Claimed Tax Increment Revenue deposited in the Housing Fund).

(ii) "Interchanges" means the interchanges serving Interstate Highway 880 at Auto Mall Parkway, Fremont Boulevard, Mission Boulevard, and Dixon Landing Road.

(jj) "Junior Position Indebtedness" means indebtedness other than Senior Position Indebtedness.

(kk) "Local Interchange Financing Authority" means a public entity or other joint powers arrangement formed by the City, the Agency, and/or, if applicable, one or more other public agencies pursuant to a joint powers agreement in accordance with Government Code Section 6500 et seq., or the authority of the Marks-Roos Local Bond Pooling Act of 1985

(Government Code Section 6584 et seq.), or the provisions of any other applicable statute, to serve as a financing authority or other joint powers arrangement for obtaining and paying local contributions toward Interchange Improvement Costs.

(ll) "Maximum General Administrative Cost Amount" for a given Fiscal Year (from Fiscal Year 1993-94 through Fiscal Year 1997-98) means the sum of: (1) One Hundred Ten Thousand Dollars (\$110,000) in 1992-93 Fiscal Year dollars, as escalated by a five percent (5%) annual compounded inflation factor to the given Fiscal Year, plus (2) the Agency's reasonable costs of administering this Agreement and any agreement(s) with one or more of the Education Districts.

(mm) "Merged Project Area" means the Fremont Merged Redevelopment Project Area consisting of the Project Area and the three Historic District Project Areas. The Merged Project Area was created pursuant to the 1998 Amended Plan and corresponding 1998 amendments to the redevelopment plans for the three Historic District Project Areas. The 2010 Amended Plan creates a single consolidated amended and restated redevelopment plan for the entire Merged Project Area.

(nn) "Non-County Participant" means one of the Non-County Participants, individually.

(oo) "Non-County Participants" means, collectively, the Participating Entities except for the County.

(pp) "Non-County Participant's Share" for a given Non-County Participant means the proportionate percentage share of Basic Tax Increment Revenue that Non-County Participant would receive as property taxes from the Project Area if there was no provision in the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan for the division of Potential Tax Increment Revenue to the Agency pursuant to Health and Safety Code Section 33670 et seq. and if no allocation of property taxes was made to the ERAF Fund. (Stated another way, a Non-County Participant's Share for a given Fiscal Year equals the product of the Basic Tax Increment Revenue for the Fiscal Year multiplied by the Unadjusted AB8 Factor for the Non-County Participant for the Fiscal Year.)

(qq) "Non-ERAF-impacted Entity" means each of the following Participating Entities: the AC Transit District, the Bay Area Air Quality Management District, the Bay Area Rapid Transit District, and the East Bay Regional Parks District.

(rr) "Original Plan" means the Original Redevelopment Plan for the Fremont Industrial Redevelopment Project, adopted November 22, 1983 by City Ordinance No. 1577.

(ss) "Other Authorized Indebtedness" means tax allocation bonds or notes issued by or on behalf of the Agency, loans received by the Agency from any legally authorized public or private lender, and other forms of indebtedness (with a repayment term of at least one (1) year) entered into by or on behalf of the Agency for the purpose of paying costs of the Project other than Interchange Improvement Costs, the repayment of which is secured in whole or in part

by a pledge of Claimed Tax Increment Revenue (other than the portion of Claimed Tax Increment Revenue deposited in the Housing Fund), and which is either:

(1) issued or incurred after the Interchange Financing Completion Date; or

(2) issued or incurred on or prior to the Interchange Financing Completion Date in a principal amount and with a debt service payment schedule consistent with the principal amount and debt service payment terms set forth for a proposed Other Authorized Indebtedness in the Approved Interchange Financing Program then in effect.

(tt) "Override Tax Increment Revenue" means the portion of Potential Tax Increment Revenue generated from the levy of all Override Tax Rates in effect in the Project Area from time to time.

(uu) "Override Tax Rate" means the tax rate levied for the benefit of a Participating Entity for the purpose of producing revenues to make annual payments of the principal of, and interest on, bonded indebtedness of the Participating Entity approved by the voters prior to January 1, 1989.

(vv) "Participating Entities" means, collectively, the following affected taxing entities: the County, the AC Transit District, the Alameda County Flood Control District, the Alameda County Library District, the Alameda County Mosquito Abatement District, the Alameda County Resource Conservation District, the Alameda County Water District, the Bay Area Air Quality Management District, the Bay Area Rapid Transit District, the East Bay Regional Park District, and the Washington Hospital District.

(ww) "Participating Entity" means one of the Participating Entities, individually.

(xx) "Potential Tax Increment Revenue" means those taxes from the Project Area which the Agency is entitled to claim and have allocated to it pursuant to the provisions of Part VII.D of the 1993 Amended Plan and the 1998 Amended Plan, and Part VII.C of the 2010 Amended Plan. Potential Tax Increment Revenue expressly does not include the Inflation Allocation, since the Agency is prohibited by the terms of Part VII D.3.a. of the 1993 Amended Plan and the 1998 Amended Plan, and Part VII.C.3 of the 2010 Amended Plan from claiming or having allocated to it the Inflation Allocation. Potential Tax Increment Revenue also does not include any property taxes from the Project Area that are allocated to and retained by the County pursuant to the provisions of Revenue and Taxation Code Section 97 (or any successor statute) for property tax collection services. For various purposes of this Agreement, Potential Tax Increment Revenue is sometimes divided between Claimed Tax Increment Revenue and Unclaimed Tax Increment Revenue; and between Basic Tax Increment Revenue and Override Tax Increment Revenue.

(yy) "Previously Designated Interchange Tax Increment Revenue" means, as of a given date, Claimed Tax Increment Revenue that, prior to such given date, was received by the Agency and encumbered, set aside or otherwise designated for payment of Interchange

Improvement Costs in accordance with the terms of this Agreement or otherwise, and that, as of such given date, has not yet been expended to pay Interchange Improvement Costs.

(zz) "Project" means the program of redevelopment to be undertaken by the Agency pursuant to the provisions of the 1993 Amended Plan, the 1998 Amended Plan, the 2010 Amended Plan and the Community Redevelopment Law. The Project includes Agency actions to implement the following activities, projects, programs and improvements, including the expenditure of Claimed Tax Increment Revenue from the Project Area, as appropriate:

(1) completion of the improvements to the Interchanges, including payment of Interchange Improvement Costs, as contemplated in Parts IV and VI of the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan;

(2) completion in the Project Area of a business/learning center, a multi-modal transit station and related facilities and services, and the widening of Fremont Boulevard between Cushing and Warren, as contemplated in Parts IV and VI of the 1998 Amended Plan and the 2010 Amended Plan;

(3) provision of affordable housing in accordance with the Community Redevelopment Law, using the portion of the Claimed Tax Increment Revenue required to be deposited into the Housing Fund;

(4) use of Claimed Tax Increment Revenue to complete unfunded portions of the redevelopment program throughout the Merged Project Area, as authorized by the merger provisions of the Community Redevelopment Law (Health and Safety Code Section 33485 et seq.) and as contemplated in the 1998 Amended Plan and the 2010 Amended Plan; and

(5) preparation and adoption of the 1998 Amended Plan, the 2010 Amended Plan, the Second Amendment and Restatement of this Agreement, the Third Amendment and Restatement of this Agreement, and any subsequent amendments of this Agreement.

(aaa) "Project Area" means the Fremont Industrial Redevelopment Project Area established by the Original Plan, as described and mapped in Exhibit A and Exhibit B of the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan. The Project Area comprises a portion of the Merged Project Area.

(bbb) "Project Completion Fiscal Year" means the Fiscal Year in which occurs the earlier of the following: (1) the completion of payment of all costs of the Project; or (2) the expiration of the Agency's authority under the 2010 Amended Plan to receive Potential Tax Increment Revenue.

(ccc) "Proposed Interchange Financing Program" has the meaning given in Section 2.5(a).

(ddd) "Released Funds" has the meaning given in Section 2.5(a)(I).

(eee) "Remaining Interchange Improvement Costs" has the meaning given in Section 2.5(a)(2).

(fff) "Second Amendment and Restatement" means the amendment and restatement of this Agreement, dated for reference purposes as of March 1, 1999, incorporating certain amendments to, and restating in its entirety, this Agreement as initially executed in 1993 and as previously amended in 1995.

(ggg) "Senior Position Indebtedness" means Interchange Indebtedness or Other Authorized Indebtedness that, as a result of the operation of Section 4.5, has a claim on Claimed Tax Increment Revenue superior in priority to the claim of the Participating Entities to receive payments under this Agreement.

(hhh) "Subordination Shortfall Amount" has the meaning given in Section 4.5(d).

(iii) "Third Amendment and Restatement" means the amendment and restatement of this Agreement, dated for reference purposes as of September 1, 2009, incorporating certain amendments to, and restating in its entirety, this Agreement as initially executed and as previously amended and restated.

(jjj) "Third Amendment Fiscal Year" means the Fiscal Year in which the 2010 Amended Plan Effective Date occurs.

(kkk) "Traffic Impact Fees" means the development fees imposed by the City to implement Citywide traffic mitigation improvements pursuant to the provisions of Article 3 of Chapter 9 of Title VIII of the Fremont Municipal Code, or any similar or successor provision of the Fremont Municipal Code, and any implementing resolutions thereto.

(III) "Unadjusted AB8 Factor" for a given Participating Entity for a given Fiscal Year means:

(1) Beginning in Fiscal Year 1994-95 and continuing through and including the Final Pre-Third Amendment Fiscal Year, the percentage for the Participating Entity in the "Percent" column for the tax code area(s) comprising the Project Area of the computer spreadsheet prepared by the County Auditor-Controller for that Fiscal Year and entitled "AB8 Calculation of Revenue Percentages In Each Code Area." If, in any given Fiscal Year, the County Auditor-Controller no longer prepares such computer spreadsheet in substantially the same way the spreadsheet was prepared annually prior to the Second Amendment and Restatement of this Agreement, the Agency and the County shall meet with the County Auditor-Controller to establish an alternate method for determining the Unadjusted AB8 Factor that achieves, as nearly as possible, the intent of this definition.

(2) Beginning with the Third Amendment Fiscal Year and continuing through and including the Project Completion Fiscal Year, the percentage for the given Participating Entity shown in Column (3) of the attached Exhibit D (which represents the



Unadjusted AB8 Factors reported by the County as of the execution of the Third Amendment and Restatement of this Agreement). By mutually acceptable agreement of the Agency and the County, the Agency and the County may modify Column (3) of Exhibit D through an amendment to this Agreement without approval of the other Participating Entities to correct any future non-material clerical corrections or adjustments of the Unadjusted AB8 Factors reported by the County. If there should occur a future material change in the Unadjusted AB8 Factors reported by the County from one Fiscal Year to the next, then, upon the request of either the Agency or the County, the Agency and the County shall implement the procedure set forth in Section 4.8 to seek to achieve a mutually acceptable modification to Column (3) of Exhibit D for consideration of approval by all of the Participating Entities in the form of an amendment to this Agreement approved by all of the Participating Entities.

(mmm) "Unclaimed Tax Increment Revenue" means the portion of Potential Tax Increment Revenue that is not claimed by the Agency and that is instead allocated by the County Auditor-Controller to the affected taxing entities, including the Participating Entities, as normal property taxes, or to the ERAF Fund as a contribution on behalf of various affected taxing entities.

(nnn) "Uncompleted Interchanges" mean the Dixon Landing Road and Mission Boulevard interchanges. The status of the Uncompleted Interchanges as of the Third Amendment and Restatement of this Agreement is set forth in Recital C.

(ooo) "1993 Amended Plan" means the Amended and Restated (Third) Redevelopment Plan for the Fremont Industrial Redevelopment Project, prepared by the Agency and adopted by the City Council of the City by Ordinance No. 2025, dated February 2, 1993.

(ppp) "1998 Amended Plan" means the Amended and Restated (Fifth) Redevelopment Plan for the Fremont Industrial Project, prepared by the Agency and adopted by the City Council of the City by Ordinance No. 2297, dated July 7, 1998.

(qqq) "1998 Report to Council" means the Report to Council for the Fremont Plan Amendments and Merger, dated May 5, 1998, as supplemented, a copy of which has been provided to each Participating Entity.

(rrr) "2010 Amended Plan" means the Consolidated Amended and Restated Redevelopment Plan for the Fremont Merged Redevelopment Project (Including Irvington, Niles, Centerville, and Industrial Areas), substantially in the form of the Public Review Draft distributed to the Participating Entities in August, 2009, as such document may ultimately be adopted by the City Council of the City.

(sss) "2010 Amended Plan Effective Date" means the last to occur of the following dates, as applicable:

(1) If no timely and valid referendum petition is filed to present the 2010 Amended Plan and the 2010 Amended Plan Ordinance to a vote of the electorate, the date that is ninety-one (91) days after the date of adoption of the 2010 Amended Plan Ordinance; or

(2) If a timely and valid referendum petition is filed to present the 2010 Amended Plan and the 2010 Amended Plan Ordinance to a vote of the electorate, the date that is the day following the certification by the appropriate election official of the results of such vote in which the vote affirms the adoption and effectiveness of the 2010 Amended Plan and the 2010 Amended Plan Ordinance; or

(3) If no timely and valid CEQA action is filed in a court of competent jurisdiction challenging the certification and/or use of the 2010 Amended Plan EIR in connection with the adoption of the 2010 Amended Plan and the 2010 Amended Plan Ordinance, the date that is thirty-one (31) days after the filing of the required CEQA notice of determination in connection with adoption of the 2010 Amended Plan and the 2010 Amended Plan Ordinance; or

(4) If a timely and valid CEQA action is filed in a court of competent jurisdiction challenging the certification and/or use of the 2010 Amended Plan EIR in connection with the adoption of the 2010 Amended Plan and the 2010 Amended Plan Ordinance, the date that is the day following the filing by the applicable court of competent jurisdiction of a non-appealable final judgment in such action denying such action and affirming and upholding the validity of the certification and/or use of the 2010 Amended Plan EIR in connection with the adoption of the 2010 Amended Plan and the 2010 Amended Plan Ordinance, such that the 2010 Amended Plan is allowed to become effective; or

(5) If no timely and valid Community Redevelopment Law action is filed in a court of competent jurisdiction challenging the adoption and/or effectiveness of the 2010 Amended Plan and the 2010 Amended Plan Ordinance, the date that is ninety-one (91) days after the adoption of the 2010 Amended Plan Ordinance; or

(6) If a timely and valid Community Redevelopment Law action is filed in a court of competent jurisdiction challenging the adoption and/or effectiveness of the 2010 Amended Plan and the 2010 Amended Plan Ordinance, the date that is the day following the filing by the applicable court of competent jurisdiction of a non-appealable final judgment in such action denying such action and affirming and upholding the adoption, validity and effectiveness of the 2010 Amended Plan and the 2010 Amended Plan Ordinance, such that the 2010 Amended Plan is allowed to become effective.

(ttt) "2010 Amended Plan EIR" means the Environmental Impact Report prepared for the 2010 Amended Plan and certified by the City Council in accordance with CEQA.

(uuu) "2010 Amended Plan Ordinance" means the ordinance adopted by the City Council approving the 2010 Amended Plan in accordance with the Community Redevelopment Law.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit A	List of Addresses for Notice Purposes
Exhibit B	Sample Calculations

- Exhibit C List of Independent Advisors  
Exhibit D Payment Factors For Participating Entities

Section 1.3 Effectiveness of Third Amendment and Restatement. The Third Amendment and Restatement of this Agreement executed by the parties as of September 1, 2009 shall become effective only upon the 2010 Amended Plan Effective Date. Upon the Agency's determination of the 2010 Amended Plan Effective Date, the Agency shall promptly provide the Participating Entities with written notice specifying the 2010 Amended Plan Effective Date. Unless and until the Third Amendment and Restatement of this Agreement becomes effective, the Agreement in the form of the Second Amendment and Restatement executed as of March 1, 1999, and without the terms contained in the Third Amendment and Restatement, shall be in full force and effect.

## ARTICLE 2 INTERCHANGE FINANCING

Section 2.1 Interchange Financing Overview. The provisions of this Article 2 and of Article 3 are intended to ensure the efficient and limited use of Potential Tax Increment Revenue, in combination with other available funding sources, to enable timely completion on a priority basis of the Interchange improvements and payment of all Interchange Improvement Costs.

Section 2.2 Traffic Impact Fee Contribution. Beginning in Fiscal Year 1993-94 and continuing through and including Fiscal Year 1997-98, the City shall pay each Fiscal Year to the Local Interchange Financing Authority, Caltrans, Caltrans' designee, or other third party contractor(s), for purposes of defraying Interchange Improvement Costs, an amount equal to thirty percent (30%) of the Traffic Impact Fees received by the City during such Fiscal Year.

Section 2.3 Other Funding Sources. Working with Caltrans and other applicable federal, state, and local transportation entities, the City, the Agency, and the County shall exercise diligent good faith efforts to obtain and apply toward the payment of Interchange Improvement Costs other available or potentially available revenues, including revenues from the following sources: the State-Local Transportation Partnership Program, the State Transportation Improvement Program (through allocations to both Alameda County and Santa Clara County), Measure B funds administered by the Alameda County Transportation Authority, and payments by the City of Milpitas and Redevelopment Agency of the City of Milpitas. The Proposed Interchange Financing Program FY 2008-2009, submitted to the County on January 29, 2009 in accordance with Section 2.5, presents the City's and Agency's best estimate, as of the date of execution of the Third Amendment and Restatement of this Agreement, of the other revenue sources that are or may become available to pay portions of the Interchange Improvement Costs, and reflects compliance as of the date of the Third Amendment and Restatement of this Agreement with the good faith covenant set forth above.

Section 2.4 Annual Report. Beginning for Fiscal Year 1993-94 and continuing for each Fiscal Year through and including the Interchange Financing Completion Date, the Agency and City shall prepare and submit to each Participating Entity, within one hundred eighty (180)

days after the end of each Fiscal Year, a report (an "Annual Report") regarding the status of construction and financing of the Interchanges, including:

(a) a summary of land acquisition, utility relocation, design, environmental assessment, and construction work undertaken for the respective Interchanges during the most recently completed Fiscal Year and anticipated to be undertaken during the current Fiscal Year;

(b) a summary of amounts expended, and the source of such amounts, in connection with improvement activities for the respective Interchanges undertaken during the most recently completed Fiscal Year;

(c) a statement of the amounts of Claimed Tax Increment Revenue expended during the most recently completed Fiscal Year for the expenditure categories delineated in Section 3.2, including a statement of the amounts of Claimed Tax Increment Revenue expended for Interchange Improvement Costs (either on a pay-as-you-go basis or through repayment of Interchange Indebtedness);

(d) a summary of the type, amount and repayment terms of the Interchange Indebtedness and Other Authorized Indebtedness issued and outstanding as of the date of the Annual Report; and

(e) a statement of the amount of Traffic Impact Fees required to be contributed by the City during the most recently completed Fiscal Year pursuant to Section 2.2 (including the basis for determining such amount), and a statement of the amount of Traffic Impact Fees actually contributed.

#### Section 2.5 Interchange Financing Program.

(a) Proposed Program. By not later than sixty (60) days after execution by all parties of the Second Amendment and Restatement of this Agreement and thereafter by not later than January 31 of each succeeding Fiscal Year, continuing through the Interchange Financing Completion Date, the Agency shall submit to the County for approval a proposed program for completing the financing of the Uncompleted Interchanges (a "Proposed Interchange Financing Program") containing the following elements:

(1) the Annual Report required pursuant to Section 2.4 and containing all of the information set forth in Section 2.4;

(2) a detailed estimate by major cost category of all Interchange Improvement Costs remaining to be paid to complete the improvement of the Uncompleted Interchanges (the "Remaining Interchange Improvement Costs") based upon (and attaching) the best available engineering information;

(3) a detailed estimate of the aggregate amount of all funding sources currently or anticipated to be available to pay the Remaining Interchange Improvement Costs (the "Anticipated Interchange Funds"), including the general nature of each funding source (e.g. proceeds of Interchange Indebtedness, Previously Designated Interchange Tax Increment

Revenue, future pay-as-you go Claimed Tax Increment Revenue, State Transportation Improvement Program, City of Milpitas, etc.), the anticipated amount of each funding source by Fiscal Year, the current status of availability of each funding source (e.g. cash-on-hand, contractual commitment, grant award, budget allocation, etc.), and supporting back-up for such funding availability (e.g. bank or other statements evidencing cash-on-hand, contracts, funding letters, etc.);

(4) a “sources and uses” cash flow budget (the “Cash Flow Budget”), showing for each Fiscal Year until anticipated completion of the Uncompleted Interchanges the anticipated expenditures for Remaining Interchange Improvement Costs (by major cost category) and the anticipated application of Anticipated Interchange Funds (by major funding source) to pay such Remaining Interchange Improvement Costs; and

(5) a summary of Claimed Tax Increment Revenue needed each Fiscal Year, either for debt service on Interchange Indebtedness or to make pay-as-you-go payments of Interchange Improvement Costs, in order to produce the Agency’s portion of Anticipated Interchange Funds described in element (3) above of the Proposed Interchange Financing Program. The Claimed Tax Increment Revenue needed for this purpose and identified in this element of the Proposed Interchange Financing Program is referred to as “Interchange-Committed Tax Increment Revenue”.

If the otherwise Anticipated Interchange Funds are less than the sum of Remaining Interchange Improvement Costs plus any Subordination Shortfall Amount (as defined in Section 4.5(d), the Proposed Interchange Financing Program shall also contain a proposed method or program to fill such funding shortfall (a “Funding Shortfall”), which method or program shall be based, among other matters, upon a good faith consideration by the City and the Agency of the commitment, consistent with applicable law, of sales tax revenue generated in the Project Area and received by the City (“City Sales Tax Revenue”) and of Traffic Impact Fees (in addition to the amount of such fees already required to be paid pursuant to Section 2.2) to reduce or eliminate such Funding Shortfall.

If the Anticipated Interchange Funds exceed the sum of Remaining Interchange Improvement Costs plus any Subordination Shortfall Amount, the Agency may propose either or both of the following as part of its proposed Interchange Financing Program:

(i) That the Agency be permitted to release a specified amount of Previously Designated Interchange Tax Increment Revenue from use to pay Interchange Improvement Costs, so that such released amount (the "Released Funds") would no longer constitute Interchange-Committed Tax Increment Revenue and could instead be used to pay for costs of the Project other than Interchange Improvement Costs. Any such proposal shall reasonably demonstrate that the Released Funds are not needed to pay Remaining Interchange Costs or any Subordination Shortfall Amount; and/or

(ii) That the Agency be permitted to issue or incur Other Authorized Indebtedness, the proceeds of which would be used to pay for costs of the Project other than Interchange Improvement Costs. Any such proposal shall: (A) set forth the

anticipated terms of the proposed Other Authorized Indebtedness, including the anticipated principal amount and anticipated debt service schedule for all debt service that would be payable from Claimed Tax Increment Revenue; and (B) reasonably demonstrate that there is anticipated to be available sufficient Claimed Tax Increment Revenue each Fiscal Year (i) to provide all Interchange-Committed Tax Increment Revenue (as described in element (5) above of the Proposed Interchange Financing Program and exclusive of any proposed Released Funds), (ii) to meet all other statutory and contractual obligations of the Agency (including the obligation to make payments to the Participating Entities pursuant to Article 4 of this Agreement), (iii) to repay any Subordination Shortfall Amount, and (iv) to pay the anticipated debt service on the proposed Other Authorized Indebtedness.

The Proposed Interchange Financing Program submitted for the Fiscal Year in which the Interchange Financing Completion Date is achieved shall prominently state such achievement and indicate the date that constitutes the Interchange Financing Completion Date. The County's approval of such Proposed Interchange Financing Program in accordance with the provisions of this Section 2.5 shall constitute a conclusive determination that the Interchange Financing Completion Date has been achieved, and thereafter no further Proposed Interchange Financing Programs shall be required to be submitted by the Agency.

(b) Standard for Approval of Proposed Program. The County shall approve a Proposed Interchange Financing Program if it meets the following objective standards as determined in accordance with the procedure set forth in subsection (c) below:

(1) the Proposed Interchange Financing Program contains each of the mandatory elements set forth in subsection (a) above;

(2) the estimate of Remaining Interchange Improvement Costs constitutes a reasonable estimate based on the best available engineering information;

(3) the estimate of Anticipated Interchange Funds constitutes a reasonable estimate, and the evidence of availability of such Anticipated Interchange Funds indicates that such funds either are available, or are reasonably likely to become available (taking into account the nature of the funding source and the level of funding commitment typically provided at the applicable stage of planning and construction by or in connection with the funding source), to pay the Remaining Interchange Improvement Costs in accordance with the Cash Flow Budget contained in the Proposed Interchange Financing Program;

(4) the Cash Flow Budget sets forth a schedule for completing the Uncompleted Interchanges as rapidly as is reasonable under the circumstances, taking into account, among other matters, reasonable design and construction schedules, outstanding environmental and regional transportation system issues, and the status of decision-making by Caltrans' and other involved entities beyond the control of the City and Agency;

(5) if there is an identified Funding Shortfall, the Proposed Interchange Financing Program evidences a good faith consideration by the City and the Agency under the applicable circumstances (including the City's overall budget status) to commit City

Sales Tax Revenue and/or additional Traffic Impact Fees toward reducing or eliminating such Funding Shortfall;

(6) if the Proposed Interchange Program proposes that a specified amount of Previously Designated Interchange Tax Increment Revenue be released to constitute Released Funds, such proposal sets forth a reasonable demonstration that the proposed Released Funds are not needed to pay Remaining Interchange Costs or any Subordination Shortfall Amount; and

(7) if the Proposed Interchange Financing Program proposes the issuance of Other Authorized Indebtedness, such proposal sets forth a reasonable demonstration that there is anticipated to be available sufficient Claimed Tax Increment Revenue each Fiscal Year (i) to provide all Interchange-Committed Tax Increment Revenue (as described in element (5) of the Proposed Interchange Financing Program), (ii) to meet all other statutory and contractual obligations of the Agency (including the obligation to make payments to the Participating Entities pursuant to Article 4 of this Agreement), (iii) to repay any Subordination Shortfall Amount, and (iv) to pay the anticipated debt service on the proposed Other Authorized Indebtedness.

(c) Process for Approval of Program. Representatives of the Agency and the County shall meet within fifteen (15) days after the County receives a Proposed Interchange Financing Program to review and address issues related to the Proposed Interchange Financing Program. Within fifteen (15) days after such meeting (or if the County does not attend a meeting called for in the previous sentence and scheduled by the Agency, within thirty (30) days after the County receives a Proposed Interchange Financing Program), the County shall provide written notice that either (1) it approves the Proposed Interchange Financing Program, or (2) it elects to have a qualified independent advisor (an “Independent Advisor”) determine whether the Proposed Interchange Financing Program meets the standards for approval set forth in subsection (b) above. If the County either notifies the Agency in writing that it approves the Proposed Interchange Financing Program or fails to elect in writing within such fifteen (15) day period to have an Independent Advisor consider the matter as provided above, the Proposed Interchange Financing Program submitted by the Agency shall thereafter constitute an Approved Interchange Financing Program.

If the County elects to have the matter referred to an Independent Advisor, the County and the Agency shall meet within ten (10) days to select in reasonable good faith an Independent Advisor from among the list attached to this Agreement as Exhibit C (or to select another mutually acceptable person or entity to serve as the Independent Advisor). If the County and the Agency cannot agree upon an Independent Advisor within such ten (10) day period, either the County or the Agency may apply to the Alameda County Superior Court to select the Independent Advisor from among the list attached as Exhibit C.

Upon selection, the County and the Agency shall jointly contract for the services of the Independent Advisor. The Independent Advisor shall be instructed to render its determination, as expeditiously as is reasonable, regarding whether the Proposed Interchange Financing Program meets the standards for approval set forth in subsection (b) above, and, if not,

to set forth in detail the basis for its determination that the standards have not been met. The Independent Advisor may employ such subcontractors as it deems necessary, subject to the reasonable approval of the County and the Agency. The cost for the services of the Independent Advisor (and any subcontractors) shall be paid by, and shall constitute a General Administrative Cost of, the Agency. The County and the Agency shall cooperate with the Independent Advisor in the Independent Advisor's performance of its responsibilities.

If the Independent Advisor determines that the Proposed Interchange Financing Program meets the standards for approval set forth in subsection (b) above, such Proposed Interchange Financing Program shall thereafter constitute an Approved Interchange Financing Program. If the Independent Advisor determines that the Proposed Interchange Financing Program does not meet the standards for approval set forth in subsection (b) above, the Agency shall, as promptly as possible, submit a revised Proposed Interchange Financing Program that addresses the reasons for the Independent Advisor's determination. The Independent Advisor shall thereupon consider the revised Proposed Interchange Financing Program, and the process described above in this paragraph shall continue until the Independent Advisor determines that a particular revised Proposed Interchange Financing Program meets the standard to constitute an Approved Interchange Financing Program.

The parties acknowledge, based on the Agency's representation and without other independent investigation or inquiry, that the Agency has submitted and the County has approved all Proposed Interchange Financing Programs due under this Section 2.5 as of the date of the Third Amendment and Restatement.

(d) Amendment of Approved Program. The Agency may submit a proposed amendment to an Approved Interchange Financing Program during the period prior to the time for submission of the next annual Proposed Interchange Financing Program. The Agency and the County shall thereupon follow the procedures set forth in subsection (c) above to determine if such proposed amendment meets the standard to become a part of (and to modify) the previously Approved Interchange Financing Program.

Section 2.6 Agency Actions Consistent With Approved Program; Issuance of Indebtedness.

(a) General. Upon approval of the first Approved Interchange Financing Program and continuing through the Interchange Financing Completion Date, the Agency shall conduct its actions with respect to the use of Claimed Tax Increment Revenue in a manner consistent with the most recent Approved Interchange Financing Plan.

(b) Limits on Indebtedness. Following execution of the Second Amendment and Restatement of this Agreement and continuing through the Interchange Financing Completion Date, the Agency shall not enter into any unconditional new indebtedness payable from Claimed Tax Increment Revenue except as follows:

(1) Indebtedness constituting Interchange Indebtedness or a short-term obligation to pay Interchange Improvement Costs;



- (2) Indebtedness constituting Other Authorized Indebtedness;
- (3) indebtedness secured by a pledge of the portion of Claimed Tax Increment Revenue that is deposited in the Housing Fund (“Housing Fund Indebtedness”);
- (4) indebtedness payable from Released Funds as designated in the most recent Approved Financing Program; and
- (5) short-term obligations (obligations currently due or due in less than a year) to pay Project costs other than Interchange Improvement Costs, but only if and to the extent sufficient Claimed Tax Increment Revenue is available to pay such short-term obligations in the applicable Fiscal Year after all Interchange-Committed Tax Increment Revenue scheduled for expenditure in the applicable Fiscal Year, as set forth in the most recent Approved Interchange Financing Program, has been expended or otherwise budgeted and provided for.

The limitations on issuance or incurrence of indebtedness set forth in this subsection (b) shall not apply after the Interchange Financing Completion Date.

(c) Additional Provisions Regarding Other Authorized Indebtedness. For Other Authorized Indebtedness scheduled to be issued or incurred on or before the Interchange Financing Completion Date, the Agency may (but shall be under no obligation to) request from the County a certificate evidencing the County’s concurrence that the proposed issuance or incurrence meets the standard of subparagraph (2) of the definition of Other Authorized Indebtedness (see Section 1.1 (mm) above) and, therefore, constitutes Other Authorized Indebtedness for purposes of this Agreement. Such Agency request shall be made not earlier than sixty (60) days nor later than thirty (30) days prior to issuance or incurrence of the Other Authorized Indebtedness, and shall be accompanied by the proposed bond resolution, trust indenture, loan agreement or other similar document evidencing the indebtedness, together with such supporting financial information as will reasonably enable the County to evaluate the indebtedness. If the proposed issuance or incurrence meets the standard of subparagraph (2) of the definition of Other Authorized Indebtedness, the County shall, within thirty (30) days of receipt of the Agency’s request and required accompanying documents, execute and deliver to the Agency a certificate to the effect that the proposed issuance or incurrence meets the standard of and constitutes Other Approved Indebtedness for purposes of this Agreement.

The Agency may issue or incur Interchange Indebtedness and Other Authorized Indebtedness as part of the same indebtedness or incurrence, subject to a common pledge of Claimed Tax Increment Revenue (other than the portion of Claimed Tax Increment deposited in the Housing Fund).

ARTICLE 3  
TREATMENT OF CLAIMED TAX INCREMENT REVENUE

Section 3.1 Limitation on Claimed Tax Increment Revenue.

(a) As authorized by Section 2.5 of the Agreement in effect prior to the execution by all parties of the Second Amendment and Restatement, for Fiscal Years 1993-94 through 1997-98 the Agency claimed the following portions of Potential Tax Increment to implement the Project and to make payments for the activities described in Section 2.6 of the Agreement in effect prior to the execution by all parties of the Second Amendment and Restatement:

<u>Fiscal Year</u>	<u>% of Potential Tax Increment Revenue That Was Claimed</u>	<u>% of Override Tax Increment Revenue That Was Claimed</u>
1993-94	75%	100%
1994-95	75%	100%
1995-96	75%	100%
1996-97	75%	100%
1997-98	67%	100%

(b) To continue to minimize the fiscal effects of the redevelopment program on the Participating Entities, from Fiscal Year 1998-99 through and including the Project Completion Fiscal Year, the Agency shall claim as Claimed Tax Increment Revenue:

(1) For any installment of Potential Tax Increment Revenue receivable by the Agency prior to the execution by all parties of the Second Amendment and Restatement of this Agreement, an amount equal to (A) not more than sixty-seven percent (67%) of the Basic Tax Increment Revenue, plus (B) one hundred percent (100%) of the Override Tax Increment Revenue; and

(2) For any installment of Potential Tax Increment Revenue receivable by the Agency after the execution by all parties of the Second Amendment and Restatement of this Agreement, an amount equal to (X) one hundred percent (100%) of the Basic Tax Increment Revenue, plus (Y) one hundred percent (100%) of the Override Tax Increment Revenue; provided, however, that if the Second Amendment and Restatement of this Agreement becomes executed by all the parties after the Agency has submitted its statement of indebtedness for a given Fiscal Year pursuant to Health and Safety Code Section 33675 based on claiming the amounts specified in subparagraph (1) above, the Agency shall be deemed to have satisfied its obligation under this subparagraph (2) for that Fiscal Year if it attempts in good faith to submit to the County Auditor-Controller an amended statement of indebtedness that would permit the Agency to instead claim the amounts specified in this subparagraph (2) and attempts in good faith to cause the County Auditor-Controller to accept such amended statement of indebtedness and to allocate to the Agency the amounts specified in this subparagraph (2).

The amounts claimed by the Agency pursuant to this subsection (b) shall be used to implement the Project, including priority completion of the Interchange improvements, and to make the payments for the activities described in Section 3.2.

(c) Following the Project Completion Fiscal Year, the Agency shall claim no further amount of Potential Tax Increment Revenue.

Section 3.2 Application of Claimed Tax Increment Revenue.

(a) Subject to the provisions of subsection (d) below, the Agency shall apply the Claimed Tax Increment Revenue it receives prior to the execution by all parties of the Second Amendment and Restatement of this Agreement for the following purposes in the following priority order:

(1) First, to make the deposit to the Housing Fund required pursuant to Health and Safety Code Section 33334.2;

(2) Second, to make any other payments mandated by the Community Redevelopment Law or other applicable statute;

(3) Third, to pay principal, interest, and any other amounts due during the Fiscal Year with respect to Interchange Indebtedness;

(4) Fourth, to pay the amounts due to the Participating Entities pursuant to the provisions of Article 4, and to pay the amounts due to the Education Districts pursuant to the provisions of agreements entered into with such Education Districts under authority of the Community Redevelopment Law.

(5) Fifth, to pay General Administrative Costs in an amount not exceeding the Maximum Administrative Cost Amount for the applicable Fiscal Year;

(6) Sixth, to pay currently due Interchange Improvement Costs for which other sources of revenue are not available or committed; and

(7) Seventh, using the balance, if any, of Claimed Tax Increment Revenue, to prepay outstanding Interchange Indebtedness (including purchase of outstanding bonds and payment of any applicable redemption premium), and/or to set aside funds in a defeasance or other similar account for future repayment of outstanding Interchange Indebtedness.

(b) Subject to the provisions of subsection (d) below, beginning with the first installment of Claimed Tax Increment Revenue that the Agency receives after execution by all parties of the Second Amendment and Restatement of this Agreement, and continuing through and including the Project Completion Fiscal Year, the Agency shall apply the Claimed Tax Increment Revenue for the following purposes in the following priority order:

(1) First, to make the deposits to the Housing Fund required pursuant to Health and Safety Code Section 33334.2 (which deposits may, in turn, be used to make debt service payments on Housing Fund Indebtedness);

(2) Second, to make any other payments mandated by the Community Redevelopment Law or other applicable statute;

(3) Third, to pay principal, interest, and any other amounts due during the Fiscal Year with respect to Interchange Indebtedness and Other Authorized Indebtedness that constitutes Senior Position Indebtedness;

(4) Fourth, to pay the amounts due to the Participating Entities pursuant to the provisions of Article 4, and to pay the amounts due to the Education Districts pursuant to the provisions of agreements entered into with such Education Districts under authority of the Community Redevelopment Law;

(5) Fifth, to pay General Administrative Costs;

(6) Sixth, to pay principal, interest, and any other amounts due during the Fiscal Year with respect to Interchange Indebtedness and Other Authorized Indebtedness that constitutes Junior Position Indebtedness;

(7) Seventh, to pay short-term obligations (obligations currently due or due in less than one year) that constitute Interchange Improvements Costs;

(8) Eighth, to pay short-term obligations (obligations currently due or due in less than a year) of the Project other than Interchange Improvement Costs; provided, however, that prior to the Interchange Financing Completion Date, Claimed Tax Increment Revenue may be used for this purpose in any given Fiscal Year only if and to the extent that sufficient Claimed Tax Increment Revenue is available to pay such short-term obligations in the applicable Fiscal Year after all Interchange-Committed Tax Increment Revenue scheduled for expenditure in the applicable Fiscal Year, as set forth in the most recent Approved Interchange Financing Program, has been expended or otherwise budgeted and provided for; and

(9) Ninth, using the balance, if any, of Claimed Tax Increment Revenue, to prepay outstanding Interchange Indebtedness and Other Authorized Indebtedness (including purchase of outstanding bonds and payment of any applicable redemption premium), and/or to set aside funds in a defeasance or other similar account for future repayment of outstanding Interchange Indebtedness and Other Authorized Indebtedness.

(c) The parties understand and agree that the claim by the Agency of Claimed Tax Increment Revenue in the amounts set forth in Section 3.1 and the application by the Agency of such Claimed Tax Increment Revenue for the purposes and in the manner set forth in this Section 3.2 will promote timely and cost effective completion of the Project (including priority completion of the Interchanges) as contemplated by Section 2.1, the 1998 Amended

Plan, and the 2010 Amended Plan; and that such actions constitute an indebtedness obligation of the Agency for the benefit of the Participating Entities.

(d) Notwithstanding any other provision of this Agreement, any Claimed Tax Increment Revenue that constitutes Released Funds as designated in the most recent Approved Interchange Financing Program may be used to pay for costs of the Project other than Interchange Improvement Costs.

#### ARTICLE 4 PAYMENTS TO PARTICIPATING ENTITIES

Section 4.1 Payments to County. Subject to the conditions, exceptions, modifications, and limitations set forth in this Article 4, the Agency shall pay to the County the following amounts:

(a) Fiscal Year 1994-95 Through 1996-97. Beginning in Fiscal Year 1994-95 and continuing through and including Fiscal Year 1996-97, the Agency shall pay to the County each Fiscal Year an amount of Claimed Tax Increment Revenue which, when added to the sum of (1) the portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to the County as normal property taxes plus (2) the Imputed ERAF Contribution for the County for the Fiscal Year, equals seventy-five percent (75%) of the County Share of Basic Tax Increment Revenue for the Fiscal Year. The parties acknowledge that, as of the execution of the Second Amendment and Restatement of this Agreement, the Agency has made all of the payments to the County required by this subsection (a).

(b) Fiscal Year 1997-98 Through Final Pre-Third Amendment Fiscal Year. Beginning in Fiscal Year 1997-98 and continuing through and including the Final Pre-Third Amendment Fiscal Year, the Agency shall pay to the County each Fiscal Year an amount of Claimed Tax Increment Revenue which, when added to the sum of (1) the portion of Unclaimed Tax Increment Revenue for that Fiscal Year that is directly allocated to the County as normal property taxes plus (2) the Imputed ERAF Contribution for the County for the Fiscal Year, equals fifty percent (50%) of the County Share of Basic Tax Increment Revenue for the Fiscal Year. By way of illustration only, Part III of Exhibit B to this Agreement contains a sample calculation of the payment due pursuant to this subsection (b). The parties acknowledge that, as of the date of the Third Amendment and Restatement of this Agreement, the Agency has made the payments to the County required by this subsection (b) through and including Fiscal Year 2008-09, but has not paid additional amounts provided for under subsection (d) of this Section.

(c) Third Amendment Fiscal Year Through Project Completion Fiscal Year. Beginning with the Third Amendment Fiscal Year and continuing through and including the Project Completion Fiscal Year, the Agency shall pay to the County each Fiscal Year an amount of Claimed Tax Increment Revenue equal to the sum of:

- (1) The Fixed ERAF Contribution Amount for the County plus

(2) The product of (i) the Basic Tax Increment for the Fiscal Year multiplied by (ii) the County's Adjusted AB8 Factor.

By way of illustration only, following is a calculation of the payment due by the Agency to the County in a particular Fiscal Year that is the subject of this subsection (c) in which the Basic Tax Increment is assumed (for illustrative purposes only) to be \$30,000,000. As shown in Column (2) of Exhibit D, the County's Fixed ERAF Contribution Amount is \$1,810,139.05. As shown in Column (4) of Exhibit D, the County's Adjusted AB8 Factor is 0.20025774. Given these assumptions and factors, the payment due to the County under this subsection (c) would be:

$$\begin{aligned} &\text{County's Fixed ERAF Contribution Amount} + (\text{Basic Tax Increment} \times \text{County's Adjusted AB8} \\ &\quad \text{Factor}) = \\ &\$1,810,139.05 + (\$30,000,000 \times 0.20025774) = \\ &\$1,810,139.05 + \$6,007,732.20 = \\ &\$7,817,871.25 \end{aligned}$$

(d) Additional Fixed ERAF Payment(s). In addition to the payments set forth in subsection (b) above, the Agency shall pay to the County the following amount(s):

(1) With Respect to Fiscal Year 2008-09. Within one (1) year after the 2010 Amended Plan Effective Date, the Agency shall pay to the County an amount equal to the Fixed ERAF Contribution Amount that the County would have received with respect to Fiscal Year 2008-09 had the 2010 Amended Plan Effective Date occurred and had the Third Amendment and Restatement of this Agreement become effective in Fiscal Year 2008-09.

(2) With Respect to Fiscal Year 2009-10 and Any Subsequent Pre-Third Amendment Fiscal Year. If the Third Amendment Fiscal Year is a Fiscal Year later than Fiscal Year 2009-10 (due to the 2010 Amended Plan Effective Date occurring after Fiscal Year 2009-10), then within thirty (30) days after the 2010 Amended Plan Effective Date does occur, the Agency shall pay to the County an amount equal to the Fixed ERAF Contribution Amount(s) that the County would have received with respect to Fiscal Year 2009-10 and any subsequent Fiscal Year occurring prior to the Third Amendment Fiscal Year had the 2010 Amended Plan Effective Date occurred and had the Third Amendment and Restatement of this Agreement become effective in Fiscal Year 2009-10.

Section 4.2 Payments to Non-County Participants. Subject to the conditions, exceptions, modifications, and limitations set forth in this Article 4, the Agency shall pay to each Non-County Participant the following amounts:

(a) Fiscal Year 1994-95 Through Final Pre-Third Amendment Fiscal Year (Basic Tax Increment Revenue). Beginning in Fiscal Year 1994-95 and continuing through and including the Final Pre-Third Amendment Fiscal Year, the Agency shall pay to each Non-County Participant each Fiscal Year an amount of Claimed Tax Increment Revenue which, when added

to the sum of (1) the portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to that Non-County Participant as normal property taxes plus (2) the Imputed ERAF Contribution for that Non-County Participant for the Fiscal Year, equals fifty percent (50%) of that Non-County Participant's Share of Basic Tax Increment Revenue for the Fiscal Year. By way of illustration only, Part III of Exhibit B to this Agreement contains a sample calculation of the payment due pursuant to this subsection (a). The parties acknowledge that, as of the date of the Third Amendment and Restatement of this Agreement, the Agency has made all the payments to the Non-County Participants required by this subsection (a) through and including Fiscal Year 2008-09, but has not paid additional amounts provided for under subsection (d) of this Section.

(b) Third Amendment Fiscal Year Through Project Completion Fiscal Year (Basic Tax Increment Revenue).

(1) Non-ERAF-impacted Entities. Beginning with the Third Amendment Fiscal Year and continuing through and including the Project Completion Fiscal Year, the Agency shall pay to each Non-ERAF-impacted Entity, an amount of Claimed Tax Increment Revenue equal to the product of (i) the Basic Tax Increment for the Fiscal Year multiplied by (ii) the applicable Non-ERAF-impacted Entity's Unadjusted AB8 Factor multiplied by (iii) fifty percent (50%).

By way of illustration only, following is a calculation of the payment due by the Agency to the East Bay Regional Park District ("EBRPD", as an example of a Non-ERAF-impacted Entity) in a particular Fiscal Year that is the subject of this subsection (b)(1) in which the Basic Tax Increment is assumed (for illustrative purposes only) to be \$30,000,000. As shown in Column (3) of Exhibit D, EBRPD's Unadjusted AB8 Factor is 0.03315866. Given these assumptions and factors, the payment due to EBRPD under this subsection (b)(1) would be:

$$\begin{aligned} \text{Basic Tax Increment} \times \text{EBRPD's Unadjusted AB8 Factor} \times 50\% &= \\ \$30,000,000 \times 0.03315866 \times 50\% &= \\ \$497,379.90 & \end{aligned}$$

(2) ERAF-impacted Entities. Beginning with the Third Amendment Fiscal Year and continuing through and including the Project Completion Fiscal Year, the Agency shall pay to each ERAF-impacted Entity (other than the County, which is instead subject to the provisions of Section 4.1(c)), an amount of Claimed Tax Increment Revenue equal to the sum of:

- (i) The Fixed ERAF Contribution Amount for the applicable ERAF-impacted Entity plus
- (ii) The product of (A) the Basic Tax Increment for the Fiscal Year multiplied by (B) the applicable ERAF-impacted Entity's Adjusted AB8 Factor.

By way of illustration only, following is a calculation of the payment due by the Agency to the Alameda County Water District ("ACWD", as an example of an ERAF-impacted Entity other than the County) in a particular Fiscal Year that is the subject of this subsection (b)(2) in which the Basic Tax Increment is assumed (for illustrative purposes only) to be \$30,000,000. As shown in Column (2) of Exhibit D, ACWD's Fixed ERAF Contribution Amount is \$52,632.97. As shown in Column (4) of Exhibit D, ACWD's Adjusted AB8 Factor is 0.00923226. Given these assumptions and factors, the payment due to ACWD under this subsection (b)(2) would be:

$$\begin{aligned}
 & \text{ACWD's Fixed ERAF Contribution Amount} + (\text{Basic Tax Increment} \times \text{ACWD's Adjusted AB8} \\
 & \qquad \qquad \qquad \text{Factor}) = \\
 & \$52,632.97 + (\$30,000,000 \times 0.00923226) = \\
 & \qquad \qquad \qquad \$52,632.97 + \$276,967.80 = \\
 & \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \$329,600.77
 \end{aligned}$$

(c) Fiscal Year 1993-94 Through Project Completion Fiscal Year (Override Tax Increment Revenue). Beginning in Fiscal Year 1993-94 and continuing through and including the Project Completion Fiscal Year, the Agency shall pay to each Non-County Participant for which an Override Tax Rate is levied, an amount equal to eighty percent (80%) of the portion of Override Tax Increment Revenue that is attributable to the levy of that Non-County Participant's Override Tax Rate. The parties acknowledge that, as of the date of the Third Amendment and Restatement of this Agreement, the Agency has made all the payments to the eligible Non-County Participants required by this subsection (c) through and including Fiscal Year 2008-09.

(d) Additional Fixed ERAF Payment(s) For ERAF-impacted Entities. For purposes of this Section 4.2(d), the term "ERAF-impacted Entities" shall exclude the County because the County is instead subject to the comparable provisions of Section 4.1(d). In addition to the payments set forth in subsection (a) above, the Agency shall pay to each ERAF-impacted Entity, the following amount(s):

(1) With Respect to Fiscal Year 2008-09. Within one (1) year after the 2010 Amended Plan Effective Date, the Agency shall pay to each ERAF-impacted Entity an amount equal to the Fixed ERAF Contribution Amount that the ERAF-impacted Entity would have received with respect to Fiscal Year 2008-09 had the 2010 Amended Plan Effective Date occurred and had the Third Amendment and Restatement of this Agreement become effective in Fiscal Year 2008-09.

(2) With Respect to Fiscal Year 2009-10 and Any Subsequent Pre-Third Amendment Fiscal Year. If the Third Amendment Fiscal Year is a Fiscal Year later than Fiscal Year 2009-10 (due to the 2010 Amended Plan Effective Date occurring after Fiscal Year 2009-10), then within thirty (30) days after the 2010 Amended Plan Effective Date does occur,



the Agency shall pay to each ERAF-impacted Entity an amount equal to the Fixed ERAF Contribution Amount(s) that the ERAF-impacted Entity would have received with respect to Fiscal Year 2009-10 and any subsequent Fiscal Year occurring prior to the Third Amendment Fiscal Year had the 2010 Amended Plan Effective Date occurred and had the Third Amendment and Restatement of this Agreement become effective in Fiscal Year 2009-10.

(e) Lump Sum Payment Alternative. In lieu of the annual payments described above, the Agency and a particular Non-County Participant may agree upon a lump sum payment or payments by the Agency that will achieve the economic intent of the annual payments, so long as such lump sum payment(s) is/are otherwise consistent with the applicable provisions of the Community Redevelopment Law. Such lump sum payment(s) may be documented by implementation letter between the Agency and the Non-County Participant without further amendment of this Agreement.

Section 4.3 Time of Payment. The Agency shall make the payments required pursuant to Sections 4.1 and 4.2 for a given Fiscal Year within thirty (30) days after the end of such Fiscal Year. Each payment made by the Agency shall be accompanied by a statement setting forth in reasonable detail the basis on which the determination of the amount of payment has been made.

Section 4.4 Limitation on Payments. Notwithstanding any other provision of this Agreement, the sum of the payments made to each Participating Entity by the Agency pursuant to this Article 4 for any given Fiscal Year shall not exceed the amount that each Participating Entity would otherwise receive from property taxes from the Project Area for that given Fiscal Year had the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan not provided for the division of taxes pursuant to Health and Safety Code Section 33670.

Section 4.5 Priority of Payments.

(a) Subordination of Payments. The Participating Entities' rights to payment under this Agreement shall be subordinate to any future Agency pledge of all or any portion of the Claimed Tax Increment Revenue otherwise payable to the Participating Entities under this Agreement in order to secure payment of: (1) Housing Fund Indebtedness; and (2) Interchange Indebtedness and Other Authorized Indebtedness for which such subordination is approved in accordance with the standards and procedures of subsection (b) below (such Interchange Indebtedness and Other Authorized Indebtedness is defined to be Senior Position Indebtedness).

(b) Agency Request and County Approval. The Agency may request the Participating Entities to subordinate their respective rights to receive payments under this Agreement to the Agency's obligation to make payments with respect to specified Interchange Indebtedness and/or Other Authorized Indebtedness. The Non-County Participants hereby appoint the County as their agent for purposes of considering and, if appropriate under the terms of this subsection (b), approving any such requests by the Agency. The Participating Entities agree that the County's approval of such requests (on its own behalf and on behalf of the Non-County Participants) will not be unreasonably withheld provided that the Agency first demonstrates to the County's satisfaction the Agency's anticipated ability to repay such Interchange Indebtedness and/or Other Authorized Indebtedness without demand being made on the payments due to the Participating Entities under the terms of this Agreement. Such

demonstration by the Agency shall show that the subordinated payments will be used in the cash-flow of the financing only for additional security (debt service coverage) and that the anticipated Claimed Tax Increment Revenue will be adequate, over the term of the applicable Interchange Indebtedness and/or Other Authorized Indebtedness, to pay on hundred percent (100%) of the actual debt service thereon, to pay the Agency's obligations under this Agreement, and to pay any other obligations of the Agency, whether statutory or contractual, which are or would be superior to the Agency's obligations under this Agreement. Any such demonstration shall include, without limitation, revenue forecasts and debt service schedules.

The Agency shall not enter into an Interchange Indebtedness and/or Other Authorized Indebtedness if, at the time of issuance or incurrence of such Interchange Indebtedness and/or Other Authorized Indebtedness, it is reasonably foreseeable that an event or events will cause the need to apply any portion of the subordinated payments to actual payment of debt service on such Interchange Indebtedness and/or Other Authorized Indebtedness. The parties expressly agree that, among other events, future natural disasters or general downturns in the national, state or regional economy shall not be deemed to constitute reasonably foreseeable events within the meaning of the preceding sentence. In addition, the Agency shall not take any action to cause the removal of taxable property from the property tax roll if such removal would cause the need to apply any portion of the subordinated payments to the actual payment of debt service on any Interchange Indebtedness and/or Other Authorized Indebtedness.

(c) Execution of Documents. Upon approval by the County of an Agency subordination request in accordance with the standards and procedures of subsection (b) above, a duly authorized representative of the County is hereby authorized by the Non-County Participants and shall, on behalf of itself and each Non-County Participant, execute any documents reasonably requested by the Agency and consistent with this Section 4.5 to evidence the subordination of the Participating Entities' payments to the proposed Senior Position Indebtedness provided for in this Section 4.5; provided, however, that, if required by Agency bond counsel, a duly authorized representative of each Participating Entity shall separately execute such subordination documents.

(d) Effect of Revenue Shortfall. If, as a result of the subordination provided for in this Section 4.5, the payments to the Participating Entities are reduced below the amount otherwise payable to them pursuant to this Agreement, then such reductions shall be treated as an advance by the Participating Entities which shall be repaid by the Agency. The unpaid principal balance thereof shall bear interest at the rate paid by the State of California Local Agency Investment Fund or its successor entity. The advances and accrued interest (together, the "Subordination Shortfall Amount") shall be considered a Funding Shortfall (as defined in Section 2.5(a)) and shall be repaid as promptly as possible and in any event the Agency shall use all Claimed Tax Increment Revenue available to it, after payment of principal and interest on the Senior Position Indebtedness to which the subordination applies and payment of any other obligations which are superior to the Agency's obligations under this Agreement (including statutory obligations, such as the Agency's housing set-aside obligations under Health and Safety Code Section 33334.2), along with certain other revenue sources described in Section 2.5(a)(5) to repay such Subordination Shortfall Amount.

Section 4.6 Section 33676 Election Superseded. The Participating Entities acknowledge that this Agreement supersedes any purported right to election under Health and Safety Code Section 33676 with respect to the 1993 Amended Plan, the 1998 Amended Plan, or the 2010 Amended Plan. The Participating Entities shall not make any election pursuant to Health and Safety Code Section 33676, and this Agreement supersedes any election previously made or purported to be made by any Participating Entity pursuant to Health and Safety Code Section 33676. Any such election or purported election shall be null and void. Each involved Participating Entity shall take any action required by the County Auditor-Controller or other responsible County official required to rescind any such prior election and to notify the County Auditor-Controller or other responsible County official that the involved Participating Entity has elected not to receive any amounts pursuant to Health and Safety Code Section 33676. The Participating Entities shall receive no payment of Claimed Tax Increment Revenue other than as provided in this Agreement or in a separate agreement executed in accordance with the provisions of the Community Redevelopment Law.

Section 4.7 Indebtedness of the Agency. The obligation of the Agency to claim the Claimed Tax Increment Revenue and to make the payments of Claimed Tax Increment Revenue in the manner specified in Sections 3.1, 3.2, 4.1, and 4.2 shall constitute an indebtedness of the Agency incurred in carrying out the Project and a pledge of Potential Tax Increment Revenue from the Project to repay such indebtedness under the provisions of Article XVI, Section 16 of Article XVI of the Constitution of the State of California and under the Community Redevelopment Law.

Section 4.8 Future Changes In AB8 Factors. If the proportionate shares of property taxes (commonly referred to as the "AB8 factors") allocable to the County and one or more Non-County Participant(s) is materially changed in a comparable manner due to subsequent legislation or a subsequent property tax allocation system implemented by the State or the County, resulting in a material increase or decrease in the aggregate payments required to be made by the Agency under this Agreement, the Agency and the County shall confer in good faith promptly after such change in AB8 factors to determine any modification of this Agreement that is appropriate to achieve, as nearly as practicable, the aggregate payment amounts by the Agency originally intended by the parties when the Agreement was initially executed and subsequently amended and restated. Any modification of this Agreement agreed upon by the Agency and the County in good faith to achieve the objective set forth in the proceeding sentence shall be memorialized in an amendment of this Agreement which, upon execution by the Agency and the County, shall become binding upon all parties to this Agreement as if executed by all parties. The Non-County Participants hereby appoint the County as their agent for purposes of the consultations and execution of amendments described above, it being understood and agreed by the parties that in the circumstances described in this Section 4.8, the County's economic interest will be comparable to that of the comparably affected Non-County Participant(s) and that the County has the necessary financial expertise to adequately represent the Non-County Participant(s) in such matter.

All other amendments of this Agreement shall require execution by all parties hereto, as more fully set forth in Section 5.7. The provisions of this Section 4.8 shall not apply to any situation in which the change in AB8 factors would result in an increase in Agency payments

under this Agreement to some Participating Entities and a decrease in Agency payments to other Participating Entities.

## ARTICLE 5 GENERAL PROVISIONS

Section 5.1 Elimination of Financial Burden; No Contest of Plan. The Participating Entities each acknowledge and agree that the payments to be made and the actions to be undertaken by the Agency and the City pursuant to this Agreement will effectively eliminate any financial burden or detriment that would otherwise be caused by the adoption of the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan, and by the implementation of the Project. In consideration of such payments and actions, each Participating Entity agrees to forgo any right or remedy it may have in law or equity to contest the preparation, adoption, or validity of the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan (including, without limitation, any right or remedy pursuant to the California Environmental Quality Act) and the implementation of the Project contemplated to be undertaken pursuant to the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan. Each Participating Entity further declares its support for the efforts of the Agency and the City in connection with the preparation, adoption and implementation of the 1993 Amended Plan, the 1998 Amended Plan, and the 2010 Amended Plan.

Section 5.2 Notices. All notices, statements, or other communications made pursuant to this Agreement to another party or parties shall be in writing, and shall be sufficiently given and served upon the party if sent by United States certified mail, return receipt requested, postage prepaid, and addressed to the applicable party in the manner specified in the attached Exhibit A.

Any party may change its address for notice purposes by written notice to the other parties prepared and delivered in accordance with the provisions of this Section 5.2.

Section 5.3 No Third Party Beneficiaries. No person or entity other than the Agency, the City, the Participating Entities and their permitted successors and assigns, shall have any right of action under this Agreement.

Section 5.4 Litigation Regarding Agreement. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement. In the event that all or any part of the modifications made in the Third Amendment and Restatement of this Agreement are held to be invalid by a court of competent jurisdiction, the parties agree that as of the effective date of such determination all of the modifications made in the Third Amendment and Restatement of this Agreement, except this provision, shall be void and the terms and provisions of the Second Amendment and Restatement executed as of March 1, 1999, shall continue to be in full force and effect.

Section 5.5 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 5.6 Attorneys' Fees. In any action which a party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

Section 5.7 Entire Agreement. This Agreement (as fully amended and restated through the Third Amendment and Restatement) constitutes the entire and integrated agreement of the Agency, the City, and the Participating Entities and supersedes all prior negotiations, representations, or agreements, either written or oral, including without limitation, the Former County Agreement and the versions of this Agreement in effect prior to the execution of the Third Amendment and Restatement. Except for amendments described in Section 4.8 (which amendments shall be processed and become effective in the manner described in Section 4.8), this Agreement may be further amended only by written instrument executed by the Agency, the City, and the Participating Entities.

Section 5.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed and subsequently amended and restated this Agreement as of the dates set forth in the opening paragraph of this Agreement.

For Attestation and/or Approval  
as to Form (Optional)

For Execution  
(Required)

REDEVELOPMENT AGENCY OF THE  
CITY OF FREMONT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF FREMONT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

COUNTY OF ALAMEDA, ALAMEDA  
COUNTY LIBRARY DISTRICT, AND  
ALAMEDA COUNTY FLOOD CONTROL  
DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

AC TRANSIT DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

For Attestation and/or Approval  
as to Form (Optional)

For Execution  
(Required)

ALAMEDA COUNTY MOSQUITO  
ABATEMENT DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ALAMEDA COUNTY RESOURCE  
CONSERVATION DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ALAMEDA COUNTY WATER DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

BAY AREA RAPID TRANSIT DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

For Attestation and/or Approval  
as to Form (Optional)

\_\_\_\_\_

\_\_\_\_\_

For Execution  
(Required)

EAST BAY REGIONAL PARK DISTRICT

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WASHINGTON HOSPITAL DISTRICT

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



EXHIBIT A  
LIST OF ADDRESSES FOR NOTICE PURPOSES

Redevelopment Agency of the  
City of Fremont  
39550 Liberty Street  
P.O. Box 5006  
Fremont, CA 94538-5006  
Attn: Executive Director

City of Fremont  
3300 Capitol Avenue  
P.O. Box 5006  
Fremont, CA 94537-5006  
Attn: City Manager

County of Alameda  
Board of Supervisors  
1221 Oak Street, Room 536  
Oakland, CA 94612  
Attn: County Administrator

AC Transit District  
1600 Franklin Street  
Oakland, CA 94612

Alameda County Flood Control District  
379 Elmhurst Street  
Hayward, CA 94544

Alameda County Library District  
2450 Stevenson Blvd.  
Fremont, CA 94538

Alameda County Mosquito Abatement District  
23187 Connecticut Street  
Hayward, CA 94545

Alameda County Resource Conservation District  
3585 Greenville Road, Suite 2  
Livermore, CA 94550

Alameda County Water District  
43885 South Grimmer Blvd.  
Fremont, CA 94538

Bay Area Air Quality Management  
District  
939 Ellis Street, 7<sup>th</sup> Floor  
San Francisco, CA 94109

Bay Area Rapid Transit District  
300 Lakeside Drive  
P.O. Box 12688  
Oakland, CA 94604-2688

East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605

Washington Hospital District  
Board of Directors  
2000 Mowry Avenue  
Fremont, CA 94538

## EXHIBIT B

The Alameda County Water District (ACWD) is one of the taxing entities for the Industrial Project Area and as such, it is one of the Non-County Participating Entities in the Industrial Project Area Fiscal Agreement. The following formulas use ACWD as an example. Except for taking override taxes into account, the examples match the results used to calculate the pass-through payment to ACWD for FY 1996-97 for the Industrial Project Area. The AB8 factors used are from FY 1995-96 since they were the most recent factors available at the time the 1996-97 pass-through payments were calculated.

### PART I - Calculation of Adjusted AB8 Factor

Step 1:	1.00	
Less:	<u>0.3759</u>	ERAF Ratio for Participating Entity for Fiscal Year
	<u>0.6241</u>	

Step 2:	0.01483094	Unadjusted AB8 Factor for Participating Entity for Fiscal Year
Multiplied by:	<u>0.6241</u>	Remainder from Step 1 above
	<u>0.00925599</u>	Adjusted AB8 Factor for Participating Entity for Fiscal Year

### PART II - Calculation of Imputed ERAF Contribution

Step 1:	0.01483094	Unadjusted AB8 Factor for Participating Entity for Fiscal Year
Less:	<u>0.00925599</u>	Adjusted AB8 Factor for Participating Entity for Fiscal Year
	<u>0.00557495</u>	Remainder

Step 2:	\$ 3,393,572	Unclaimed Tax Increment Revenue for Fiscal Year (see note)
Multiplied by:	<u>0.00557495</u>	Remainder from Step 1 (above)
	<u>\$ 18,919</u>	Imputed ERAF Contribution [for Participating Entity]

### Note

For the illustrative fiscal year (1996-97) the Unclaimed Tax Increment Revenue of \$3,393,572 equals the difference between the Basic Tax Increment of \$13,574,286 and the Claimed Tax Increment of \$10,180,714. The Claimed Tax Increment is calculated based on a percentage of the Basic Tax Increment. The percentage claimed for FY 1996-97 was 75% which was the maximum percentage allowed by the Fiscal Agreement for that year.

## EXHIBIT B CONTINUED

### PART III - Calculation of Payment to Participating Entity

<b>Step 1:</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%; text-align: right;">\$ 13,574,285</td> <td style="width: 70%;">Basic Tax Increment (Claimed and Unclaimed)</td> </tr> <tr> <td style="padding-left: 10px;">Multiplied by:</td> <td style="text-align: right;">0.01483094</td> <td>Unadjusted AB8 Factor for Participating Entity for Fiscal Year</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 201,319</td> <td>Non-County Participant's Share of Basic Tax Increment for Fiscal Year</td> </tr> </table>		\$ 13,574,285	Basic Tax Increment (Claimed and Unclaimed)	Multiplied by:	0.01483094	Unadjusted AB8 Factor for Participating Entity for Fiscal Year		\$ 201,319	Non-County Participant's Share of Basic Tax Increment for Fiscal Year
	\$ 13,574,285	Basic Tax Increment (Claimed and Unclaimed)								
Multiplied by:	0.01483094	Unadjusted AB8 Factor for Participating Entity for Fiscal Year								
	\$ 201,319	Non-County Participant's Share of Basic Tax Increment for Fiscal Year								
<b>Step 2:</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%; text-align: right;">\$ 201,319</td> <td style="width: 70%;">Non-County Participant's Share of Basic Tax Increment for Fiscal Year (from Step 1 above)</td> </tr> <tr> <td style="padding-left: 10px;">Multiplied by:</td> <td style="text-align: right;">0.50</td> <td>Agency payment percentage specified in Article 4</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 100,660</td> <td></td> </tr> </table>		\$ 201,319	Non-County Participant's Share of Basic Tax Increment for Fiscal Year (from Step 1 above)	Multiplied by:	0.50	Agency payment percentage specified in Article 4		\$ 100,660	
	\$ 201,319	Non-County Participant's Share of Basic Tax Increment for Fiscal Year (from Step 1 above)								
Multiplied by:	0.50	Agency payment percentage specified in Article 4								
	\$ 100,660									
<b>Step 3:</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%; text-align: right;">\$ 3,393,572</td> <td style="width: 70%;">Unclaimed Tax Increment Revenue for Fiscal Year</td> </tr> <tr> <td style="padding-left: 10px;">Multiplied by:</td> <td style="text-align: right;">0.00925599</td> <td>Adjusted AB8 Factor for Participating Entity for Fiscal Year</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 31,411</td> <td>Portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to Non-County Participant [by County Auditor-Controller]</td> </tr> </table>		\$ 3,393,572	Unclaimed Tax Increment Revenue for Fiscal Year	Multiplied by:	0.00925599	Adjusted AB8 Factor for Participating Entity for Fiscal Year		\$ 31,411	Portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to Non-County Participant [by County Auditor-Controller]
	\$ 3,393,572	Unclaimed Tax Increment Revenue for Fiscal Year								
Multiplied by:	0.00925599	Adjusted AB8 Factor for Participating Entity for Fiscal Year								
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<b>Step 4:</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%; text-align: right;">\$ 31,411</td> <td style="width: 70%;">Portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to Non-County Participant [by County Auditor-Controller] (result from Step 3 above)</td> </tr> <tr> <td style="padding-left: 10px;">Plus:</td> <td style="text-align: right;">\$ 18,919</td> <td>Imputed ERAF Contribution for Non-County Participant (result from Part II above)</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 50,330</td> <td></td> </tr> </table>		\$ 31,411	Portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to Non-County Participant [by County Auditor-Controller] (result from Step 3 above)	Plus:	\$ 18,919	Imputed ERAF Contribution for Non-County Participant (result from Part II above)		\$ 50,330	
	\$ 31,411	Portion of Unclaimed Tax Increment Revenue for the Fiscal Year that is directly allocated to Non-County Participant [by County Auditor-Controller] (result from Step 3 above)								
Plus:	\$ 18,919	Imputed ERAF Contribution for Non-County Participant (result from Part II above)								
	\$ 50,330									
<b>Step 5:</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%; text-align: right;">\$ 100,660</td> <td style="width: 70%;">Result from Step 2 above</td> </tr> <tr> <td style="padding-left: 10px;">Less:</td> <td style="text-align: right;">\$ 50,330</td> <td>Result from Step 4 above</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 50,330</td> <td>Pass-through Payment to Participating Entity</td> </tr> </table>		\$ 100,660	Result from Step 2 above	Less:	\$ 50,330	Result from Step 4 above		\$ 50,330	Pass-through Payment to Participating Entity
	\$ 100,660	Result from Step 2 above								
Less:	\$ 50,330	Result from Step 4 above								
	\$ 50,330	Pass-through Payment to Participating Entity								

#### Note

The above calculations are intended as an example for the formulas specified in Article 4, Sections 4.1 and 4.2 of the Fiscal Agreement. Since the example uses the Alameda County Water District (ACWD) and ACWD is a Non-County Participant, certain calculations above use the term "Non-County Participant" in order to match the description in Section 4.2 (a) even though the formulas apply to all Participating Entities.

**EXHIBIT C**  
**LIST OF INDEPENDENT ADVISORS**

**Economic & Financial Analysis**

David Mealy & Associates  
204 Surrey Street  
San Francisco, CA 94131  
PH (415) 584-5534

Seifel Associates  
220 Bush St., Suite 448  
San Francisco, CA 94104  
PH (415) 989-1244

Keyser Marston Associates, Inc.  
55 Pacific Avenue Mall  
San Francisco, CA 94111  
PH (415) 398-3050

Vernazza Wolfe Associates, Inc.  
5464 College Avenue, Suite C  
Oakland, CA 94618  
PH (510) 596-2475

**Financial Advisors**

Fieldman & Rolapp  
1900 California Boulevard # 830  
Walnut Creek, CA 94596-3742  
PH (925) 933-6096

Kitahata and Company  
137 Joost Avenue  
San Francisco, CA 94131  
PH (415) 337-1950

Kelling, Northcross & Nobriga  
1333 Broadway, Suite 1000  
Oakland, CA 94612  
PH (510) 839-8200

Public Financial Management  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111  
PH (415) 982-5544

**Bond Counsel**

Brown & Wood  
555 California Street #5000  
San Francisco, CA 94104-1502  
PH (415) 772-1200

Orrick, Herrington & Sutcliffe  
400 Sansome Street  
San Francisco, CA 94111  
PH (415) 773-5467

Jones, Hall, Hill & White  
4 Embarcadero Center, 19<sup>th</sup> Floor  
San Francisco, CA 94111  
PH (415) 391-5980

Quint & Thimmig  
100 Pine Street  
San Francisco, CA 94111  
PH (415) 765-1550

**Engineering Firms**

Creegan & D'Angelo  
6150 Stoneridge Mall Road, Suite. 100  
Pleasanton, CA 94588-3238  
PH (925) 463-9150

Mark Thomas & Co., Inc.  
90 Archer Street  
San Jose, CA 95112  
PH (408) 453-5373

Korve Engineering  
155 Grand Avenue, Suite 400  
Oakland, CA 94612  
PH (510) 763-2929

EXHIBIT D  
PAYMENT FACTORS FOR PARTICIPATING ENTITIES

(1) Participating Entity	(2) Fixed ERAF Contribution Amount <sup>1</sup>	(3) Unadjusted AB8 Factor	(4) Adjusted AB8 Factor
County of Alameda	\$1,810,139.05	0.39366568	0.20025774
Alameda County Library District	243,273.75	0.05007097	0.02435954
Alameda County Flood Control District—Clean Water Program	7,523.14	0.00235956	0.00141337
Alameda County Flood Control District—Zone 6	110,162.38	0.03409877	0.02192551
AC Transit District	0.00	0.03569335	0.03569335
Alameda County Mosquito Abatement District	5,677.40	0.00157416	0.00097221
Alameda County Resource Conservation District	470.91	0.00031203	0.00026192
Alameda County Water District	52,632.97	0.01483807	0.00923226
Bay Area Air Quality Management District	0.00	0.00236130	0.00236130
Bay Area Rapid Transit District	0.00	0.00693438	0.00693437
East Bay Regional Park District	0.00	0.03315866	0.03315866
Washington Hospital District	0.00	0.00000000 <sup>2</sup>	0.00000000 <sup>3</sup>

<sup>1</sup> Participating Entities with a 0.00 in this column are multi-county entities that are not subject to an ERAF payment obligation.

<sup>2</sup> Washington Hospital District received a pass-through payment under this Agreement as initially executed because, at that time, it levied an override bond property tax, but it never received any portion of the Basic Tax Increment Revenue. Consequently, the County assigns an Unadjusted AB8 Factor and an Adjusted AB8 Factor of 0.000000 to that District.

<sup>3</sup> See footnote 2 above.

EXHIBIT D  
PROPOSED PROGRAMS AND PROJECTS  
FOR MERGED PROJECT AREA

## Part I: Projects That Are Fully Funded But Not Completed

This category consists of Agency-assisted programs and projects that, as of the date of adoption of this Consolidated Plan, have received all anticipated Agency funding, but for which all physical improvements activities have not yet been completed.

No.	Project Name	Project Location	Project Description
<b>REGIONAL TRANSPORTATION</b>			
<b>1</b>	<b>Freeway Interchange Improvements</b>		
A	I-880 / Dixon Landing Road Interchange	Interstate -880/ Dixon Landing Rd	Funding for improving the interchange by adding lanes to Interstate-880 between Dixon Landing Rd and Route 237/I-880 interchange in Milpitas
B	I-880 / Mission Blvd Interchange	Interstate-880/ Mission Blvd and Kato Rd.	Funding for widening of Mission Boulevard underpass, rebuilding on and off ramps between Mission Boulevard and Kato Road, and extending Warren Ave over Interstate-880
<b>2</b>	<b>Transit and Railway Improvements</b>		
A	Washington Grade Separation	Washington Blvd and Paseo Padre Parkway	Funding for construction of an overpass on Washington Boulevard and an underpass on Paseo Padre Parkway to separate vehicular and pedestrian traffic from railroad crossings.
<b>IRVINGTON</b>			
<b>3</b>	<b>Economic Development &amp; Property Acquisition/Redevelopment</b>		
A	Bay Street Streetscape & Public Parking	Bay St, Trimboli and Papazian St	Funding for design and construction of a public parking lot on Bay St, as well as streetscape improvements along Bay, Trimboli and Papazian St
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Osgood Road Median Improvements	Osgood Rd.	Funding for design and construction of median improvements on Osgood Road
<b>CENTERVILLE</b>			
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Street and Sidewalk Improvements on Hansen Ave, Baine Ave and Joseph St	Hansen Ave, Baine Ave and Joseph St	Funding for design and construction of street and sidewalk improvements on Hansen, Baine and Joseph St
<b>NILES</b>			
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Sidewalk & Street Improvements: I, J and G Streets	I, J and G Streets	Funding for sidewalk and street improvements including curb cuts, gutters, sidewalks, tree grates, and decorative lighting.
B	Fire Station #2	Niles Blvd / G St.	Funding of additional costs associated with land acquisition, design and construction of the new fire station site

## Part II: Projects To Be Fully Funded Prior To \$400 Million Cap

This category consists of Agency-assisted programs and projects that, as of the date of adoption of this Consolidated Plan, are expected to receive all anticipated Agency funding prior to the date that the \$400 million prior cap on receipt of tax increment revenue from the Industrial Project Area portion of the Merged Project Area (which cap is being increased by this Consolidated Plan) would have been reached.

No.	Project Name	Project Location	Project Description
<b>IRVINGTON</b>			
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Greenbelt Gateway along Grimmer Blvd.	Grimmer Blvd.	Funding for development of a pedestrian/bicycle access way along Grimmer Boulevard Greenbelt Gateway to implement a connection between the Irvington commercial district and Fremont's Central Park
<b>CENTERVILLE</b>			
<b>3</b>	<b>Economic Development &amp; Property Acquisition/Redevelopment</b>		
A	Centerville Unified Site	Fremont Blvd/ Thornton Ave.	Funding of acquisition, tenant relocation, demolition and site clearance in order to facilitate private development of a mixed-use project
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Bill Ball Plaza Improvements	Bill Ball Plaza; area surrounding Centerville Depot	Funding to facilitate integrating the Bill Ball Plaza into surrounding commercial areas; enhancing features and amenities of the area surrounding the Centerville Depot
<b>NILES</b>			
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Niles Town Plaza (UP Site Redevelopment - Phase I)	Niles Blvd., former UP site	Funding for site acquisition and remediation, and ultimate design and construction of a public plaza in the heart of the Niles district
B	Sidewalk & Street Improvements: H Street	H St.	Funding for sidewalk and street improvements including curb cuts, gutters, sidewalks, tree grates, and decorative lighting.
C	Niles Blvd Roadway Improvements	Niles Blvd.	Roadway improvements along Niles Blvd.



### Part III. Projects To Be Fully Funded After \$400 Million Cap

This category consists of Agency-assisted programs and projects that, as of the date of adoption of this Consolidated Plan, are expected to receive all anticipated Agency funding only after the date that the \$400 million prior cap on receipt tax increment revenue from the Industrial Project Area portion of the Merged Project Area (which cap is being increased by this Consolidated Plan) would have been reached.

No.	Project Name	Project Location	Project Description
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#### REGIONAL TRANSPORTATION

2 Transit and Railway Improvements			
A	Rail Station and Multi-Modal Transit Facility	Automall @ UPRR	Provide station for rail service to the area including multimodal transit facility and surrounding parking
B	Irvington BART Station	Washington/Osgood Rd	Funding for design and construction of Irvington BART Station
C	Regional Transit Stations & Connections	Bonde/Fremont Blvd	Assist in the construction of stations and connectors to local, regional and national transportation systems (e.g. 2nd platform @ Centerville Depot)
D	Grade Crossing Improvements	Areawide	Improve grade crossings as necessary

#### IRVINGTON

3 Economic Development & Property Acquisition/Redevelopment			
A	Property Acquisition	Areawide	Acquire properties to stimulate private development for future redevelopment/economic development opportunities
B	Monument Center Redevelopment	Fremont Blvd/Bay St	Facilitate private sector redevelopment of the site
C	Selected Bay Street Properties Redevelopment	Bay St (between Fremont and Chapel Way)	Redevelop a portion of Bay St properties (approx. 1 acre) for future mixed uses
D	Selected Main Street Properties Redevelopment	Main St (b/w Railroad and Union St)	Redevelop a portion of Main St properties (approx. 1 acre) for future residential and mixed uses
E	Irvington Concept Plan Implementation	N/A	Implement projects in Irvington at various locations, consistent w/Irvington Concept Plan
F	Public & Private Parking Facilities	N/A	Develop municipal and private parking projects to increase parking opportunities in the subarea
4 Building Rehabilitation, Façade Improvement and Historic Preservation			
A	Historic Building Assessment	N/A	Identify and prepare initial assessments for potentially significant historic buildings and prepare a list of character defining features related to the historic district in order to streamline and guide future development
B	Façade Improvements and Commercial Rehabilitation	N/A	Implement a program to encourage façade improvement, building restoration and rehabilitation of properties targeting key areas within the subarea
5 Public Infrastructure, Facilities & Landscaping			

A	Circulation & Traffic Operation Improvements	Grimmer Blvd (between Fremont and Paseo Padre), Blacow @ Osgood undercrossing, Fremont & Washington, Chapel and Bay St intersections, Grimmer & Davis St intersections, Irvington & Trimboli	Provide new street impvts including paving, curbs, gutters, sidewalks, lighting, trees and landscaping as appropriate throughout the subarea; undertake street and intersection improvements to enhance traffic circulation, reduce pedestrian/vehicle conflicts, and achieve safer and more consistent street widths as appropriate throughout the subarea; implement traffic calming projects at various locations throughout Irvington
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**CENTERVILLE**

<b>3</b>	<b>Economic Development &amp; Property Acquisition/Redevelopment</b>		
A	Property Acquisition	Areawide	Acquire properties to stimulate private development for future redevelopment/economic development opportunities
B	Redevelopment of Peralta Gas Station Site	Peralta Blvd	Facilitate private sector redevelopment of the site
C	Re-use of former Fire Station 6 Site	Former Fire Station 6	Facilitate rehabilitation of the former Fire Station 6 site for future adaptive re-use
D	Centerville Specific Plan Implementation	N/A	Implement projects in Centerville, consistent w/Centerville Specific Plan
E	Public & Private Parking Facilities	N/A	Provide increased municipal parking resources in the central area through property acquisition and development of parking facilities
<b>4</b>	<b>Building Rehabilitation, Façade Improvement and Historic Preservation</b>		
A	Historic Building Assessment	N/A	Identify and prepare initial assessments for potentially significant historic buildings and prepare a list of character defining features related to the historic district in order to streamline and guide future development
B	Façade Improvements and Commercial Rehabilitation	N/A	Implement a program to encourage façade improvement, building restoration and rehabilitation of properties targeting key areas within the subarea
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Circulation & Traffic Operation Improvements	N/A	Provide circulation improvements, including traffic control devices (signals and improved signals controls, etc.), turning lanes, etc., with special emphasis on major arterials; implement traffic calming programs at various locations throughout the subarea
B	Re-use of Dusterberry/Peralta Site	Peralta/Dusterberry	Funding for a potential new recreational or a community gathering space opportunity

**NILES**

<b>3</b>	<b>Economic Development &amp; Property Acquisition/Redevelopment</b>		
A	Property Acquisition	Areawide	Acquire properties to stimulate private development for future redevelopment/economic development opportunities
B	Redevelopment of Henkel Site	Henkel Site	Facilitate private sector redevelopment of the site
C	Tourist/Visitor Attraction Program (Inc. Historic Train)	N/A	Develop Niles as a tourist/visitor-serving location, including the following: creation of a marketing plan to help tourists/visitors; development of a program to attract restaurants and other retail; development/support and implementation of an events program
D	Redevelopment & Parking Lot Improvements of the U.P. Site (Phase 2)	UP Site (Phase 2 portion)	Redevelop site with a future, primarily retail, mix of uses
E	Niles Concept Plan Implementation	N/A	Implement projects in Niles at various locations, consistent with Niles Concept Plan

F	Public & Private Parking Facilities	N/A	Provide increased municipal parking resources in the central area through property acquisition and development of parking facilities
<b>4</b>	<b>Building Rehabilitation, Façade Improvement and Historic Preservation</b>		
A	Historic Building Assessment	N/A	Identify and prepare initial assessments for potentially significant historic buildings and prepare a list of character defining features related to the historic district in order to streamline and guide future development
B	Façade and Commercial Rehabilitation	N/A	Implement a program to encourage façade improvement, building restoration and rehabilitation of properties targeting key areas within the subarea
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Circulation and Traffic Operation Improvements	N/A	Encourage street and intersection improvements, enhance traffic circulation, reduce pedestrian/vehicle conflicts, and achieve safer and more consistent street widths as appropriate throughout the subarea; implement traffic calming programs throughout Niles
B	Alley Improvements	N/A	Work with private owners to rehabilitate the alleys (i.e. Iron Horse Lane between 2nd St and Niles Blvd)
C	Niles Pedestrian Accessway	N/A	Land acquisition, site clean-up, Americans with Disabilities Act (ADA) improvements and construction of a pedestrian accessway between the railroad tracks and the Niles Town Plaza
D	Vallejo Mills Park (Reconstruction of a mill)	Vallejo Mills Park	Funding for reconstruction of a historic mill in Vallejo Mills Park

### INDUSTRIAL AREA

<b>3</b>	<b>Economic Development &amp; Property Acquisition/Redevelopment</b>		
A	Business & Learning Center	Pacific Commons district	Construction of a Business and Learning Center to provide advanced technology, life-long learning facilities and/or business/learning resources
<b>4</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Widen Fremont Blvd (Between Cushing & Warren)	Fremont Blvd (b/w Cushing and Warren)	Facilitate widening of Fremont Blvd between Cushing Ave and Warren Ave

### ALL AREAS

<b>3</b>	<b>Economic Development &amp; Property Acquisition/Redevelopment</b>		
A	Entertainment & Cultural Venues to Support the Commercial Districts	N/A	Encourage development of entertainment and cultural venues (i.e. Irvington Depot restoration, Historic winery rehab, etc) in the Merged Project Area
B	Opportunities for Economic Development and Visioning	N/A	Facilitate development of commercial enhancement options and economic development opportunities throughout the Merged Project Area
<b>4</b>	<b>Building Rehabilitation, Façade Improvement and Historic Preservation</b>		
A	Seismic Retrofit & Safety Upgrades	N/A	Funding for implementing a program to correct building safety problems throughout the Merged Project Area, including assistance for upgrading older structures to meet current earthquake and safety codes
B	Graffiti Abatement	N/A	Focused graffiti abatement activities in the Merged Project Area
<b>5</b>	<b>Public Infrastructure, Facilities &amp; Landscaping</b>		
A	Fremont Blvd. Streetscape Improvements	N/A	Focused streetscape and landscaping improvements along various sections of Fremont Blvd, which run through central commercial districts in the Merged Project Area
B	Streetscape Improvements & Signage	Main St, etc	Funding for design, right of way and construction costs of streetscape and sidewalk improvements throughout the historic districts, as well as district-specific signage enhancements
C	Utility Undergrounding	N/A	Facilitate utility undergrounding where appropriate

D	Storm Drain, Sewer & Water Improvements (i.e. Regional Stormwater Treatment Facility, etc)	N/A	Implement, as appropriate, storm drainage, sewer, and water system improvements including upgrading of water mains, laterals and fire hydrants
E	Future Capital Projects of Regional Benefit	N/A	Facilitate projects of regional benefit (i.e. Roberts Ave Creek restoration), including the enhancement of recreational amenities (i.e. Quarry Lakes, Alameda Creek Trail, Public Access to Vargas Plateau from the Niles Canyon)
<b>6 Hazardous Materials Clean-up</b>			
A	Hazardous Materials Clean-Up	N/A	Provide hazardous materials clean-up assistance in those cases where it has been determined that it is infeasible for the private sector to accomplish it in a timely manner

<b>7 Affordable Housing Development*</b>			
A	New Construction	Areawide/Citywide	Financial and technical assistance to produce new affordable housing units
B	First Time Homebuyer's Program	Areawide/Citywide	Loans for downpayment assistance to increase ownership opportunities for Fremont first time homebuyers
C	Home Improvement Loan Program	Areawide/Citywide	Funding for low interest loans to assist home owners in improving their homes and to prevent neighborhood deterioration and arrest blight
D	Apartment Acquisition and Rehabilitation	Areawide/Citywide	Funding for acquisition and/or improvement loans at reduced interest rates to secure affordable rents over a minimum 55 year term and to prevent neighborhood deterioration and to arrest blight
E	Preservation of Affordable Housing	Areawide/Citywide	Providing technical assistance and securing necessary financial resources so that affordable housing units do not convert to market rate after their restricted affordability term expires

<b>8 Contingency</b>			
A	Contingency Funds	N/A	Funding for unanticipated project contingencies
<b>9 Administration</b>			
A	Administration & Staffing Expenses	N/A	Funding for staff expenditures

\*Redevelopment Agency's Affordable Housing Development is guided by the Five Point Program, adopted in 1998, which invests 20% Housing Funds deposits in five distinct programs (Items A-E above) to meet the City's overall goals to produce, enhance and preserve affordable housing. During the effectiveness period of the proposed Plan Amendment, Agency's appropriations and investments will continue to be guided by the Five Point Program and therefore ongoing efforts to enhance the City's affordable housing supply are not being categorized by the three funding distinctions applied to the non-housing projects ("Projects that already have been fully funded but not completed", "Projects that will be fully funded prior to reaching the \$400 M cap", and "Projects that will be fully funded after the \$400 M cap").

**Table 1  
AC Transit Sp District 2  
Industrial Area (Portion of Merged Project Area)**

Year (N)	Fiscal Year	Hypothetical Calculations of AB 1290 Statutory Pass Through										Calculations Per Agreement							
		(1) Assessed Value	Tier 1 Calculations			Tier 2 Calculations			Tier 3 Calculations			(11) Statutory Pass Through Payments	(12) Tax Increment to Agency	(13) AC Transit Share (at 3.57%)	(14) Difference (13) - (11)				
			(2) Incremental AV Over FY 1993/94 AV	(3) Pass Through Basis 20%	(4) AC Transit Share (at 3.57%)	(5) Incremental AV Over FY 2003/04 AV	(6) Pass Through Basis 16.8%	(7) AC Transit Share (at 3.57%)	(8) Incremental AV Over FY 2023/24 AV	(9) Pass Through Basis 11.2%	(10) AC Transit Share (at 3.57%)								
Base 1983/ 84																			
1994 1993/ 94		1,021,682,806															8,162,318		
1995 1994/ 95		1,105,495,748	83,812,942	167,626	5,983								5,983			8,535,980	152,339	146,356	
1996 1995/ 96		1,178,334,386	156,651,580	313,303	11,183								11,183			9,074,174	161,944	150,761	
1997 1996/ 97		1,394,943,002	373,260,196	746,520	26,646								26,646			10,789,562	192,558	165,912	
1998 1997/ 98		1,480,912,682	459,229,876	918,460	32,783								32,783			9,866,367	176,082	143,299	
1999 1998/ 99		1,762,163,838	740,481,032	1,480,962	52,860								52,860			12,106,581	216,062	163,202	
2000 1999/ 00		1,848,056,540	826,373,734	1,652,747	58,992								58,992			18,818,095	335,840	276,848	
2001 2000/ 01		1,966,056,627	944,373,821	1,888,748	67,416								67,416			20,360,929	363,375	295,959	
2002 2001/ 02		2,282,585,036	1,260,902,230	2,521,804	90,012								90,012			23,809,859	424,927	334,915	
2003 2002/ 03		2,406,701,656	1,385,018,850	2,770,038	98,872								98,872			24,302,745	433,723	334,851	
2004 2003/ 04		2,382,213,355	1,360,530,549	2,721,061	97,124								97,124			23,761,536	424,064	326,941	
2005 2004/ 05		2,339,338,530	1,317,655,724	2,635,311	94,063	(42,874,825)	0	0					94,063			23,257,631	415,071	321,008	
2006 2005/ 06		2,449,096,607	1,427,413,801	2,854,828	101,898	66,883,252	112,364	4,011					105,909			24,613,678	439,272	337,374	
2007 2006/ 07		2,497,833,155	1,476,150,349	2,952,301	105,378	115,619,800	194,241	6,933					112,311			24,892,948	444,256	338,879	
2008 2007/ 08		2,775,755,507	1,754,072,701	3,508,145	125,217	393,542,152	661,151	23,599					148,816			29,631,671	528,827	403,609	
2009 2008/ 09		2,930,401,702	1,908,718,896	3,817,438	136,257	548,188,347	920,956	32,872					169,129			29,943,042	534,384	398,127	
<b>Total (in Nominal Dollars)</b>					<b>1,104,684</b>			<b>67,414</b>					<b>0</b>			<b>1,172,098</b>		<b>5,242,725</b>	<b>4,138,041</b>
<b>Total (in FY 2009/10 Dollars)*</b>					<b>1,577,369</b>			<b>74,681</b>					<b>0</b>			<b>1,652,510</b>		<b>7,852,725</b>	<b>6,275,142</b>
2010 2009/ 10		2,979,711,140	1,958,028,334	3,916,057	139,777	597,497,785	1,003,796	35,829					175,606			29,148,288	520,200	380,423	
2011 2010/ 11		3,061,476,486	2,039,793,680	4,079,587	145,614	679,263,131	1,141,162	40,732					186,346			30,934,467	552,077	406,463	
2012 2011/ 12		3,245,182,493	2,223,499,687	4,446,999	158,728	862,969,138	1,449,788	51,748					210,476			31,673,991	565,275	406,547	
2013 2012/ 13		3,325,126,980	2,303,444,174	4,606,888	164,435	942,913,625	1,584,095	56,542					220,977			33,901,747	605,033	440,598	
2014 2013/ 14		3,553,504,569	2,531,821,763	5,063,644	180,738	1,171,291,214	1,967,769	70,236					250,975			36,210,929	646,245	465,506	
2015 2014/ 15		3,793,114,530	2,771,431,724	5,542,863	197,843	1,410,901,175	2,370,314	84,604					282,448			38,633,302	689,476	491,633	
2016 2015/ 16		4,044,425,263	3,022,742,457	6,045,485	215,784	1,662,211,908	2,792,516	99,674					315,458			39,595,370	706,646	490,862	
2017 2016/ 17		4,148,347,033	3,126,664,227	6,253,328	223,202	1,766,133,678	2,967,105	105,906					329,108			40,617,104	724,880	501,678	
2018 2017/ 18		4,255,386,456	3,233,703,650	6,467,407	230,843	1,873,173,101	3,146,931	112,325					343,168			43,373,010	774,064	543,221	
2019 2018/ 19		4,537,867,122	3,516,184,316	7,032,369	251,009	2,155,653,767	3,621,498	129,263					380,272			46,228,793	825,030	574,021	
2020 2019/ 20		4,833,989,110	3,812,306,304	7,624,613	272,148	2,451,775,755	4,118,983	147,020					419,168			48,866,089	872,097	599,949	
2021 2020/ 21		5,108,326,585	4,086,643,779	8,173,288	291,732	2,726,113,230	4,579,870	163,471					455,203			50,137,595	894,789	603,057	
2022 2021/ 22		5,244,165,395	4,222,482,589	8,444,965	301,429	2,861,952,040	4,808,079	171,616					473,046			51,476,447	918,683	617,254	
2023 2022/ 23		5,384,079,369	4,362,396,563	8,724,793	311,417	3,001,866,014	5,043,135	180,006					491,423			52,855,644	943,297	631,880	
2024 2023/ 24		5,528,190,762	4,506,507,956	9,013,016	321,705	3,145,977,407	5,285,242	188,648					510,353			55,909,681	997,802	676,097	
2025 2024/ 25		5,841,770,043	4,820,087,237	9,640,174	344,090	3,459,556,688	5,812,055	207,452	313,579,281	351,209	12,536		564,078			58,894,743	1,051,075	706,985	
2026 2025/ 26		6,151,802,515	5,130,119,709	10,260,239	366,222	3,769,589,160	6,332,910	226,043	623,611,753	698,445	24,930		617,195			60,728,496	1,083,802	717,579	
2027 2026/ 27		6,345,391,165	5,323,708,359	10,647,417	380,042	3,963,177,810	6,658,139	237,651	817,200,403	915,264	32,669		650,362			62,380,781	1,113,290	733,248	
2028 2027/ 28		6,518,341,912	5,496,659,106	10,993,318	392,388	4,136,128,557	6,948,696	248,022	990,151,150	1,108,969	39,583		679,993			64,088,066	1,143,759	751,371	
2029 2028/ 29		6,696,481,181	5,674,798,375	11,349,597	405,105	4,314,267,826	7,247,970	258,704	1,168,290,419	1,308,485	46,704		710,514			65,846,772	1,175,146	770,041	
2030 2029/ 30		6,879,964,629	5,858,281,823	11,716,564	418,203	4,497,751,274	7,556,222	269,707	1,351,773,867	1,513,987	54,039		741,950			67,952,819	1,212,732	794,528	
2031 2030/ 31		7,098,717,293	6,077,034,487	12,154,069	433,819	4,716,503,938	7,923,727	282,824	1,570,526,531	1,758,990	62,784		779,428			70,125,202	1,251,502	817,682	
2032 2031/ 32		7,324,925,478	6,303,242,672	12,606,485	449,968	4,942,712,123	8,303,756	296,389	1,796,734,716	2,012,343	71,827		818,184			72,371,892	1,291,598	841,630	
2033 2032/ 33		7,558,839,639	6,537,156,833	2,484,553	88,682	5,176,626,284	1,652,667	58,989	2,030,648,877	432,197	15,427		163,098			13,619,520	243,063	154,381	
2034 2033/ 34		7,800,718,545	6,779,035,739	0	0	5,418,505,190	0	0	2,272,527,783	0	0		0			0	0	0	
<b>Total (in Nominal Dollars)</b>					<b>6,684,926</b>			<b>3,723,403</b>			<b>360,499</b>		<b>10,768,828</b>			<b>20,801,562</b>		<b>14,116,636</b>	
<b>Total (in FY 2009/10 Dollars)*</b>					<b>3,291,520</b>			<b>1,696,834</b>			<b>115,769</b>		<b>5,104,124</b>			<b>10,568,024</b>		<b>7,276,503</b>	

\*Present Value Discount Rate: 6.0%

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**From:** Elisa Tierney [mailto:etierney@fremont.gov]  
**Sent:** Monday, December 07, 2009 12:25 PM  
**To:** Ken Scheidig; Lewis Clinton  
**Cc:** Jim Gleich; Harriet Commons; Harvey Levine; Jim Pierson; Melissa Dile; Jack Nagle  
**Subject:** Conference Call Followup

Dear Ken and Lewis:

Thank you for taking the time to speak with our Finance Director Harriet Commons, City Attorney Harvey Levine, Transportation and Operations Director Jim Pierson, Agency Special Counsel Jack Nagle and me earlier this week. We hope we have been able to answer your questions and that you now have what you need in order to respond to any questions your Board may raise.

Under separate cover, we are sending you each a copy of the CD distributed to AC Transit in August. The disk contains copies of the Draft Plan Amendment, the Preliminary Report, the Draft Subsequent Environmental Impact Report for the Plan Amendment (the Draft SEIR), and the Notice of Availability of the Draft SEIR.

With this email, we are sending you the following information:

- The list of Proposed Projects (Exhibit D of the Redevelopment Plan Amendment Report to Council). This outlines all projects currently anticipated under the Plan.
- A Table which delineates the methodology for the Agency's Pass-Through payment to AC Transit.

In our call, we spoke about AC Transit's Pass-Through payment and how it compares to what AC Transit would have received from a Statutory Pass-Through. Although, as you know, the current situation does not allow for a Statutory Pass-Through option, the numbers in the attached table indicate that you historically have been, and in the future will continue to be, financially better off as a result of the Pass-Through negotiated by AC Transit in 1993 than if the Industrial area had been subject to a Statutory Pass-Through payment formula. The attached Impact Table indicates that under the current negotiated formula, AC Transit has and will continue to receive 50% of its contribution share in the form of a Pass-Through. This compares to what would have averaged out to be roughly 18.4% of its contribution share given the prescribed formula of a Statutory Pass-Through. In present value dollar terms, the difference is quite evident. Over the life of the Plan, in present value dollars, AC Transit will receive approximately \$18.4 million in negotiated Pass-Through, compared with \$7 million for a Statutory Pass-Through. In summary, you can see that the Agency has treated, and proposes to continue to treat, AC Transit in a very fair and responsible manner while allowing important redevelopment activities to proceed.

We also briefly discussed and concluded the issue of subordination. This issue is discussed further in Section 4.5 (a) of the Third Amended and Restated Fiscal Agreement ( p. 29), which has a strong requirement that the Agency demonstrate sufficient tax increment capacity to fund its contract pass-through obligations to AC Transit, the County and other taxing entities before it would be allowed to issue future tax increment bonds on a priority basis. As noted, the current issue that AC Transit is being asked to consider, related to the proposed redevelopment plan amendment and the continuation/extension of the existing contract pass-through agreement, does not involve any bond issuance or any request for subordination of AC Transit's (or any other taxing entity's) entitlement to receive pass-through payments from the Redevelopment Agency.

We hope this clarifies all remaining issues for you and the Board. Harriet Commons and I plan on attending your Finance committee meeting on Wednesday, and look forward to a favorable recommendation.

Thank you once again for your help.

Regards,

-Elisa

Elisa Tierney  
Redevelopment Agency Director  
City of Fremont  
Office of Housing and Redevelopment  
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510.494.4501  
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ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 09-062

A RESOLUTION AUTHORIZING THE INTERIM GENERAL MANAGER TO EXECUTE THE THIRD AMENDED AND RESTATED FISCAL AGREEMENT REGARDING THE FREMONT INDUSTRIAL REDEVELOPMENT PROJECT

WHEREAS, the Redevelopment Agency of the City of Fremont (the Agency) created the Fremont Industrial Redevelopment Project (the Project) in 1983; and

WHEREAS, in 1993 the Agency entered into a Fiscal Agreement Regarding the Fremont Industrial Redevelopment Project with the Alameda-Contra Costa Transit District (AC Transit) and other affected taxing agencies impacted by the Project to establish a percentage formula for each entity's tax participation, which amount is greater than the statutory amount the entities would otherwise have received; and

WHEREAS, AC Transit has approved the First and Second Amended and Restated Fiscal Agreements that occurred in 1995 and 1999, respectively; and

WHEREAS, the Agency is proposing additional projects within the Project area which will extend the life of the Project to the late 2020s/early 2030s and is requesting the affected taxing agencies to agree to the Third Amended and Restated Fiscal Agreement; and

WHEREAS, AC Transit has reviewed the proposed Third Amended and Restated Fiscal Agreement Regarding the Fremont Industrial Redevelopment Project;

Now, Therefore, the Alameda-Contra Costa Transit District Board of Directors does resolve as follows:

**Section 1.** Authorizes the Interim General Manager to execute the Third Amended and Restated Fiscal Agreement Regarding the Fremont Industrial Redevelopment Project.

**Section 2.** This resolution shall become effective upon its passage and adoption by four affirmative votes of the Board of Directors.

PASSED AND ADOPTED THIS \_\_\_\_\_ day of December 2009.

\_\_\_\_\_  
Ryan "Rocky" Fernandez, President

ATTEST:

\_\_\_\_\_  
Linda Nemeroff, District Secretary



I, Linda Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Resolution was passed and adopted at a Regular Board Meeting of the Board of Directors held on the \_\_\_\_ day of December 2009, by the following roll call vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

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Linda Nemeroff, District Secretary

APPROVED AS TO FORM:

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Kenneth C. Scheidig, General Counsel