

TAXING ENTITY COMPENSATION AGREEMENT [FORM]

IN CONNECTION WITH THE TRANSFER OF THE 345 WILLIAMS AVENUE PROPERTY FROM THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (“SUCCESSOR AGENCY”) TO THE CITY AND COUNTY OF SAN FRANCISCO (“CITY”) FOR FUTURE REDEVELOPMENT ACTIVITY

This agreement, dated for reference purposes as of the ____ day of _____, 20__ (the “Agreement”) is entered into by and among the City, the San Francisco Unified School District, San Francisco Community College District, Bay Area Air Quality Management District, and Bay Area Rapid Transit District to comply with state law related to the transfer of certain assets from the Successor Agency to the City. (For purposes of this Agreement, the above-referenced public entities other than the City are referred to as the “Taxing Entities” and the City and Taxing Entities together are referred to as the “Parties”.)

RECITALS

A. On February 1, 2012, California law dissolved all redevelopment agencies, including the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, (the “Former Agency”), pursuant to California Health and Safety Code Sections 34170 et seq. (the “Redevelopment Dissolution Law”). By operation of law, the assets of the Former Agency were transferred to the Successor Agency, commonly known as the Office of Community Investment and Infrastructure (“OCII”).

B. As a result of redevelopment dissolution, the Successor Agency assumed all of the remaining authority, rights, powers, duties, and obligations of the Former Agency and became the owner of all of the Former Agency's real property, including Assessor's Block 5423A, Lot 009, located at 345 Williams in the former Bayview Hunters Point Redevelopment Project Area and further described in Exhibit A, incorporated herein by reference (the “Property”).

C. The Property is a 92,209-square-foot lot improved with a 29,000-square foot full-service supermarket. In 1990, the Former Agency purchased the Property with \$4,000,000 in federal Community Development Block Grant Program (“CDBG”) funds, as defined by Title 24 in the Code of Federal Regulations, specifically for the development of a supermarket in order to provide Bayview residents access to a full-service grocery store.

D. In 1991, the Former Agency entered into a lease (the “Lease”) with Cala Foods, Inc. (“Cala Foods” or the “Lessee”) for improvements to the existing building and premises and operation of a full-service supermarket on the Property. Under the Lease, Cala Foods has the exclusive right to use the Property only for the operation of a supermarket through the lease term of October 2031, inclusive of all Lessee options.

E. The United States Department of Housing and Urban Development (“HUD”) requires that all proceeds from the sale or lease of CDBG funded properties shall be treated as “CDBG Program Income,” under the Community Development Block Grant Program as defined by Title 24 in the Code of Federal Regulations Section 570.500 (“CDBG Program Income”).

F. In 2014, HUD conducted a project-specific monitoring review that included the Property. The purpose of the review was to “ensure that binding and enforceable obligations and conditions placed on these projects as result of HUD funding—have been and/or are currently being adhered to in compliance with applicable Community Development Block Grant (CDBG) Program requirements.” Letter, Maria Cremer, Director, Community Planning and Development Division, to Olson Lee, Director, Mayor’s Office of Housing and Community Development, at 1 (Sep. 26, 2014). HUD concluded that OCII had collected, tracked and expended the Property’s lease revenues in compliance with CDBG program requirements and stated further that the PMP must ensure that the future use of the Property “compl[ies] with CDBG program income requirements.” *Id.* at 3.

G. Redevelopment Dissolution Law requires successor agencies to former redevelopment agencies to dispose of the former agencies’ property assets under a Long-Range Property Management Plan (“PMP”). The PMP must address the use or disposition of each property and is subject to approval by the California Department of Finance (“DOF”) and oversight board. Redevelopment Dissolution Law provides only four types of transfer or uses: retention by an appropriate public entity of property for governmental use (as that term is defined in 34181 (a) (1)), retention by a city or county of property for future development, sale of the property, or use of the property, to fulfill an enforceable obligation. California Health and Safety Code Section 34191.5(c)(2).

H. On November 23, 2015, the Oversight Board to the Successor Agency of the City and County of San Francisco (“Oversight Board”) approved, by Resolution No. 14-2015 (attached as Exhibit B), the Successor Agency’s PMP. The PMP identified the Property as a Successor Agency asset to be transferred to the City for retention for future development. Transfer to the City would ensure that the CDBG program income requirements would continue to apply to any lease or sale revenues generated by the Property and that the City could continue to pursue the objective of providing a full-service supermarket to the Bayview Hunters Point community.

I. Under Section 34191.5(c)(2)(A)(iii) of the California Health and Safety Code, the retention of a successor agency asset for future development requires a compensation agreement between a city (or county) and other taxing entities, consistent with Section 34180(f). Given that any proceeds received by the City for the lease or sale of the Property are restricted CDBG program income, the PMP identified the Property’s value as the “covenants and conditions on the Site restricting its use and any future disposition to purposes consistent with the CDBG program and with the original economic

and community development objectives for the Site, namely the development of a full-service supermarket in an underserved neighborhood.” Tab 5 B (Other Properties: Land Leased to Kroger’s Grocery Store – 345 Williams) to OCII Long-Range Property Management Plan, attached as Exhibit C.

J. On December 7, 2015, the California Department of Finance (“DOF”) approved the Oversight Board’s resolution approving the PMP, which provides for the transfer of the Property from the Successor Agency to the City for retention for future development, pursuant to California Health and Safety Code Section 34191.5(c)(2). Letter, Justyn Howard to Sally Oerth (Dec. 7, 2015), attached as Exhibit D. In its approval letter, DOF noted that the PMP “recommends no payments of money under the compensation agreements as certain properties possess covenants and conditions that represent significant value. Finance neither approves nor denies the Agency’s recommended compensation agreements, as compensation agreements are negotiations between the City and County and the other affected taxing entities, not the Agency. As such, Finance has no authority to approve compensation agreements, but rather approves the LRPMP’s stated intent that a compensation agreement will be executed.” Id. at 1.

K. The Parties desire to enter into this Agreement to comply with the terms of the PMP for the execution of an appropriate compensation agreement in accordance with California Health and Safety Code Section 34191.5.

NOW THEREFORE, the Parties agree as follows:

1. Purpose. This Agreement is executed with reference to the facts set forth in the foregoing Recitals, which are incorporated into this Agreement by this reference.

2. Restrictions on Use of Property Lease or Sales Proceeds. The City shall covenant and agree for itself, and its successors and assigns to or of the Property, that the City is subject to the restrictions on the use of any proceeds received from the sale or lease of the Property, which proceeds shall be treated as CDBG Program Income as defined by Title 24 in the Code of Federal Regulations Sections 570.500. The restrictions and covenants shall be set forth in the quitclaim deed transferring the Property from the Successor Agency to the City.

3. Compensation. Under this Agreement, the City will not pay any monetary compensation to the Taxing Entities. The compensation consists of covenants and conditions on the Property restricting its use and any future disposition to purposes consistent with the original economic and community development objectives for the Property, namely the development of a full-service supermarket in the Bayview. These conditions and covenants constitute a significant value in lieu of the payment of money.

4. No Third Party Beneficiaries. The Parties intend that the rights, obligations and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement.

5. 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 (1) United States certified mail, return receipt requested, postage pre-paid, or (2) nationally recognized overnight courier, with charges prepaid or charged to sender's account, and addressed to the applicable Party in the manner specified in the attached Exhibit E.

6. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all of any part of the subject matter hereof.

7. Waivers and Amendments. All waivers of the provisions of this Agreement shall be in writing and executed by the appropriate authorities of the Parties, and any amendment, modification, or termination hereto shall be in writing and effective only upon written agreement of all of the Parties.

8. Amendment. This Agreement may be modified only in writing and only if signed by the Taxing Entities and the City at the time of the modification.

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

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which so executed shall be deemed an original, regardless of its date and/or delivery, and said counterparts, taken together, shall constitute one and the same Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

PARTIES TO THE AGREEMENT

THE CITY AND COUNTY OF SAN FRANCISCO

By: _____

Approved as to Form:

Dennis J. Herrera, City Attorney

By: _____

###, Deputy City Attorney

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

BAY AREA RAPID TRANSIT DISTRICT

Exhibit A
Property Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at the point of intersection of the Southeasterly line of Phelps Street with the Southerly line of Williams Avenue (85 feet wide); thence from said point of beginning along said Southerly line of Williams Avenue South 79 degrees 40' 51" East 656.85 feet to the present Northwesterly line of Newhall Street; thence along said Northwesterly line of Newhall Street South 35 degrees 35' 09" West 252.68 feet to the Northeasterly line of lands conveyed to Southern Pacific Co., a Corporation, by Deed from Pacific Can Co., a Corporation, dated March 3, 1928 and recorded March 20, 1928, in Book 1621 of the Official Records of the City and County of San Francisco, at Page 353; thence along last said Northeasterly line North 75 degrees 51' 57" West 590.62 feet to the Westerly line of the land conveyed by Special Superior Court Case No. 39647, Entitled: "M. H. Cameron vs. all persons"; thence North 15 degrees 29' 38" East 12.84 feet; thence North 54 degrees 25' 21" West 39.87 feet to said Southeasterly line of Phelps Street; thence along said line of Phelps Street North 35 degrees 34' 39" East 176.26 feet to the point of beginning.

Excepting Therefrom:

That portion thereof described in the Deed executed by Williams Street Properties, a California General Partnership to the City and County of San Francisco, recorded May 24, 1989, in Book E877, Page 682 of the Official Records of the City and County of San Francisco, described as follows:

Beginning at the point of intersection of the Southerly line of Williams Avenue and the Northwesterly line of Newhall Street; thence Southwesterly along said Northwesterly line of Newhall Street 252.68 feet to the Northeasterly line of the land conveyed to Southern Pacific Co., a Corporation, by Deed from Pacific Can Co., a Corporation dated March 3, 1928, and recorded March 20, 1928, at Page 353 in Book 1621 of the Official Records of the City and County of San Francisco; thence Westerly along last said Northeasterly line 135.80 feet; thence deflecting as 85 degrees 49 minutes 11 seconds to the right from the preceding course 219.51 feet to the Southerly line of Williams Avenue; thence Easterly along said Southerly line of Williams Avenue 244.76 feet to the point of beginning.

Being a portion of Lot 1 in Assessor's Block No. 5423A

Parcel Two:

A nonexclusive easement to maintain in place a pedestrian walkway and water pipelines as set forth in Grant of Easement executed by City and County of San Francisco, a municipal corporation to Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, recorded August 14, 1992, Instrument No. F171580, Reel F692, Image 387 of the Official Records of the City and County of San Francisco, over the following described property:

Beginning at the Northwesterly corner of that certain parcel of land conveyed by Williams Street Properties to the City and County of San Francisco by deed recorded May 24, 1989, in Reel E877, Image 682 of the Official Records of the City and County of San Francisco; thence Southerly along the Westerly line of said parcel, 31.40 feet; thence at a right angle Easterly 5 feet; thence at a right angle Northerly 31.40 feet to the Southerly line of Williams Avenue; thence Westerly along said Southerly line of Williams Avenue, 5 feet to the point of beginning.

Parcel Three:

A nonexclusive easement to maintain in place the building foundation and pedestrian walkway as set forth in Grant of Easement executed by City and County of San Francisco, a municipal corporation to Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, recorded August 14, 1992, Instrument No. F171580, Reel F692, Image 387 of the Official Records of the City and County of San Francisco, over the following described property:

Commencing at the Northwesterly corner of that certain parcel of land conveyed by Williams Street Properties to the City and County of San Francisco by deed recorded May 24, 1989, in Reel E877, Image 682, Official Records of the City and County of San Francisco; thence Southerly along the Westerly line of said parcel 31.40 feet to the true point of beginning; thence Southerly along the Westerly line of said parcel 122.90 feet; thence at a right angle Easterly 3 feet; thence at a right angle Northerly 122.90 feet; thence at a right angle Westerly 3 feet, more or less, to the true point of beginning.

APN: Lot 009, Block 5423A