

SECOND AMENDMENT TO  
FISCAL AGREEMENT REGARDING  
FREMONT INDUSTRIAL REDEVELOPMENT PROJECT

This Second Amendment (the "Second Amendment") to Fiscal Agreement Regarding Fremont Industrial Redevelopment Project is entered into as of November 1, 2009 by and between the Redevelopment Agency of the City of Fremont (the "Agency") and the Ohlone Community College District (the "District"), on the basis of the following facts, understandings and intentions of the parties:

RECITALS

A. In 1993, the City of Fremont (the "City") adopted the Amended and Restated (Third) Redevelopment Plan for the Fremont Industrial Redevelopment Project (the "1993 Amended Plan") to redevelop the Fremont Industrial Redevelopment Project Area (the "Project Area").

B. In connection with the adoption of the 1993 Amended Plan, the Agency and the District entered into a Fiscal Agreement Regarding Fremont Industrial Redevelopment Project dated as of January 1, 1993 (the "Initial Agreement").

C. In 1998, the City adopted the Amended and Restated (Fifth) Redevelopment Plan for the Fremont Industrial Redevelopment Project (the "1998 Amended Plan"), which, among other matters, merged the Project Area with the City's three other redevelopment project areas to form the Fremont Merged Project Area (the "Merged Project Area").

D. In connection with the adoption of the 1998 Amended Plan, the Agency and the District entered into a First Amendment to the Initial Agreement dated as of March 1, 1999 (the "First Amendment," and, together with the Initial Agreement, the "Agreement"). Capitalized terms used but not defined in this Second Amendment shall have the meanings set forth in the Agreement.

E. Among other matters, the Agreement provides for the Agency to make specified pass-through payments to the District until the 1998 Amended Plan terminates.

F. The Agency is now preparing for consideration of adoption by the City a further amendment and restatement of the 1998 Amended Plan, which will take the form of a "Consolidated Amended and Restated Redevelopment Plan For The Fremont Merged Redevelopment Project (Including Irvington, Niles, Centerville, and Industrial Areas)" (the "Proposed 2010 Amended Plan"). The purposes of the Proposed 2010 Amended Plan include, among other matters, the increase in the limit on the amount of tax increment revenue from the Project Area portion of the Merged Project Area that may be allocated to the Agency.

G. The Proposed 2010 Amended Plan will benefit the Agency by granting the additional financial and legal resources needed to complete in a more effective and timely manner the redevelopment of the Merged Project Area.

H. The Proposed 2010 Amended Plan will benefit the District by extending the period during which the Agency will claim Tax Increment Revenue, thereby extending the period for and increasing the amount of pass-through payments the Agency will make to the District under the Agreement. In turn, the additional pass-through payments from the Agency will provide the District with increased revenues for capital improvements that will not be offset by reductions in State or other funding sources.

I. In connection with the Proposed 2010 Amended Plan, the parties desire to amend certain defined terms and related provisions in the Agreement to provide for the potential adoption of the Proposed 2010 Amended Plan, and the resulting extension of pass-through payments to the District under the Agreement.

NOW, THEREFORE, the Agency and the District agree as follows:

Section 1. Amendment to Section 1.1(b). Section 1.1(b) of the Agreement is revised in its entirety to read as follows:

*(b) "Amended Plan" means the Amended and Restated Redevelopment Plan for the Fremont Industrial Redevelopment Project, adopted by City Council of the City of Fremont Ordinance No. 2297, dated July 7, 1998, as it may be subsequently amended by the Proposed 2010 Amended Plan (defined below) or other amendment that increases the limit on the amount of tax increment revenue that may be claimed by the Agency from the Project Area. As used herein, the "Proposed 2010 Amended Plan" means the amendment and restatement of the Amended Plan entitled "Consolidated Amended and Restated Redevelopment Plan For The Fremont Merged Redevelopment Project (Including Irvington, Niles, Centerville, and Industrial Areas)" that, as of the date of the Second Amendment of this Agreement, is being prepared by the Agency for consideration of adoption by the City Council, and that would increase the limit on the amount of tax increment revenue that may be claimed by the Agency from the Project Area.*

Section 2. Amendment To Section 2.2(f). Section 2.2(f) of the Agreement is hereby amended to strike the word "1998" before the phrase "Amended Plan," so that Section 2.2(f) shall now read in its entirety as follows:

*(f) Subject to subsection (g) below, beginning in Fiscal Year 2009-2010 and continuing until expiration or termination of the Amended Plan, the Agency shall pay to the District each Fiscal Year an amount equal to fifty percent (50%) of the District Share of Net Claimed Tax Increment Revenue.*

Section 3. Amendment To Section 2.2(g). Section 2.2(g) of the Agreement is hereby amended to strike the word "1998" before the phrase "Amended Plan," so that Section 2.2(f) shall now read in its entirety as follows:

(g) *Notwithstanding any other provision of this Agreement, the Agency shall have no obligation to make any payments to the District for any Fiscal Year beginning after the Fiscal Year in which the Amended Plan expires or is otherwise terminated by action of the City and Agency.*

Section 4. Amendment To Section 2.2(h). Section 2.2(h) of the Agreement, which formerly defined the term "1998 Amended Plan," is hereby modified in its entirety to read as follows since that definition is now incorporated into the definition of "Amended Plan" as provided above in Section 1 of this Second Amendment, so that the text of former Section 2.2(h) is no longer necessary:

(h) *[Intentionally blank]*

Section 5. Support for Proposed 2010 Amended Plan. The District acknowledges and agrees that the payments to be made and the actions to be undertaken by the Agency pursuant to the Agreement, as amended by this Second Amendment, will effectively eliminate any financial burden or detriment that would otherwise be caused by the adoption of the Proposed 2010 Amended Plan and implementation of the Project. In consideration of such payments and actions, the District agrees to forgo any right or remedy it may have in law or equity to contest the preparation, adoption, or validity of the Proposed 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 Proposed 2010 Amended Plan. The District further declares its support for the efforts of the Agency in connection with the preparation, adoption and implementation of the Proposed 2010 Amended Plan.

Section 6. Effect of Second Amendment. Upon the full execution of this Second Amendment, the provisions of this Second Amendment shall be incorporated into the Agreement and shall become a fully effective part thereof. Except as provided in this Second Amendment, all terms and conditions of the Agreement shall continue in full force and effect. Only those provisions of the Agreement specifically amended herein shall be affected by this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first above written.

Attest:

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OHLONE COMMUNITY COLLEGE DISTRICT

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

Attest:

\_\_\_\_\_

REDEVELOPMENT AGENCY OF THE CITY OF  
FREMONT

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

Bob Wasserman  
Chairman