

**DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO**

**AND**

**TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC  
RELATIVE TO NAVAL STATION TREASURE ISLAND**

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**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO**

**AND**

**TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC  
RELATIVE TO NAVAL STATION TREASURE ISLAND**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) dated as of \_\_\_\_\_, 2011, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a political subdivision and municipal corporation of the State of California (the “**City**”), and **Treasure Island Community Development, LLC**, a California limited liability company (the “**Developer**”) pursuant to the authority of Sections 65864 *et seq.* of the California Government Code and Chapter 56 of the San Francisco Administrative Code. City and Developer are also sometimes referred to individually as a “**Party**” and together as the “**Parties**.”

**RECITALS**

This Agreement is made with reference to the following facts, intentions and understandings of the Parties:

A. Determination of Public Benefits. The City has determined that as a result of the development of the Project Site in accordance with this Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. The public benefits are as provided in the Disposition and Development Agreement between the Treasure Island Development Authority (the “**Authority**”), a California non-profit public benefit corporation, and Developer, dated as of \_\_\_\_\_ approved by the Board of Supervisors by Resolution No. \_\_\_\_\_ (the “**DDA**”), the applicable portions of which DDA referenced herein are incorporated herein by this reference.

B. . The “**Project**” is more particularly described in the Treasure Island / Yerba Buena Island Special Use District (Planning Code Section 249.52) and the Design for Development, the following attachments to the DDA: the Land Use Plan, the Infrastructure Plan, the Parks and Open Space Plan, , the Housing Plan, the Schedule of Performance, and the Phasing Plan; and the following Project Plans adopted by the Authority Board concurrently with its approval of the DDA: the Transportation Plan, the Community Facilities Plan and the Sustainability Plan, of which, Developer is obligated under the DDA to comply with the Transportation Plan Obligations, Community Facilities Obligations and Sustainability Obligations, all as defined in the DDA. Without limitation, the Project includes the following components:

i. Geotechnical stabilization of certain portions of Treasure Island and the causeway connecting it to Yerba Buena Island, and addition of fill to raise the surface elevation on those portions of Treasure Island that are to be developed to address flood protection and potential future sea level rise as more particularly described in the Infrastructure Plan;

ii. Up to 6,316 residential units, of which 5% percent will be Inclusionary Units as more specifically defined in the Housing Plan attached to the DDA, with up to an additional 1,684 below market rate residential units to be designed, constructed and completed by other qualified housing developers on behalf of the Authority and the Treasure Island Homeless TIHDI in accordance with the Housing Plan, provided however, that the total percentage of below-market rate Residential Units, including Inclusionary Units, may be adjusted upwards from 25% to 30% in accordance with Section 9.1 of the Housing Plan;

iii. Up to approximately 140,000 square feet of new commercial and retail space with accessory parking;

iv. Up to approximately 100,000 square feet of new office space with accessory parking;

v. Adaptive reuse of Buildings 1, 2, and 3 on Treasure Island with up to 311,000 square feet of commercial/flex space (the adaptive reuse would include approximately 67,000 square feet of additional retail, which, when combined with the 140,000 square feet of new retail yields a total of 207,000 square feet of retail space proposed on the Islands) with accessory parking;

vi. Adaptive reuse of certain of the historic buildings on Yerba Buena Island;

vii. Up to approximately 500 hotel rooms or Fractional Interest Units;

viii. New and/or upgraded public and community facilities, including a new joint police/fire station and funding for upgraded school facilities on Treasure Island, and Developable Lots for the development by Authority or third parties of the Treasure Island Sailing Center, an Environmental Education Center and other community facilities, as more particularly described in the Community Facilities Obligations attached to the DDA as Exhibit F;

ix. New and/or upgraded public utilities, including the water distribution system, wastewater collection system, recycled water storage and distribution system, storm water collection and Stormwater Management Control system, Developable Lots to accommodate the Wastewater Treatment Facility and other SFPUC improvements, as more particularly described in the Infrastructure Plan;

x. Up to approximately 300 acres of parks and public open space, as more particularly described in the Parks and Open Space Plan;

xi. New and/or upgraded streets and public ways as more particularly described in the Infrastructure Plan;

xii. Bicycle, transit, and pedestrian facilities as more particularly described in the Infrastructure Plan;

xiii. Landside services for the Marina as more particularly described in the Infrastructure Plan and the DDA,

xiv. A ferry quay/bus intermodal transit center as more particularly described in the Infrastructure Plan; and

xv. Such additional environmental remediation work more particularly described in the Infrastructure Plan after issuance of one or more FOST(s) for the Project Site.

The Project facilitates the City's long-term goal of implementing the creation of a new City neighborhood on Treasure Island and Yerba Buena Island that seismically strengthens the development areas of Treasure Island and provide extensive public benefits to the City such as significant amounts of new affordable housing, increased public access and open space, transportation improvements, extensive infrastructure improvements, and recreational and entertainment opportunities, while creating jobs and a vibrant, sustainable community. In particular, the Project provides an innovative transportation program designed to maximize transit usage and opportunities for walking and biking, with a dense mixed-use urban core in close proximity to transit, and provides a model for sustainable development. The Project provides for the creation of approximately 300-acres of public open spaces, including neighborhood parks, sports fields, shoreline parks, wetlands, and urban farm and large areas for passive recreation and native habitat. Among the many public benefits provided, the Project provides more than \$700 Million in infrastructure costs, including Island stabilization and geotechnical improvements, parks and open space, utilities, community facilities, street improvements; including capital improvements and operating subsidies for the transportation program; and an estimated \$345 Million for the affordable and transition housing program to allow the production of up to 2,000 new affordable units. In addition, the Project undertakes significant environmental remediation costs to undertake remediation to the necessary level above that required to be performed by the Navy; and includes the rehabilitation and adaptive reuse of historic buildings.

B. Code Authorization. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et. seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City has adopted Chapter 56 of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement with a private developer pursuant to the Development Agreement Statute.

C. Property Subject to this Agreement. The property that is the subject of this Agreement consists of the real property located on former Naval Station Treasure Island ("**NSTI**") shown on Exhibit A and more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "**Project Site**").

D. Development Proposal; Intent of the Parties.

i. In 1993, Congress and the President selected NSTI for closure and disposition by the Base Realignment and Closure Commission acting under Public Law 101-510, 10 U.S.C. §2687 and its subsequent amendments. The Department of Defense initially

designated the City as the Local Reuse Authority (“**LRA**”) responsible for the conversion of NSTI under the federal disposition process.

ii. In 1997, the Board of Supervisors by Resolution No. 380-97 approved and authorized the incorporation of the Authority as a nonprofit public benefit corporation to promote the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of NSTI for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco. Subsequently, the Department of Defense designated the Authority as the LRA for NSTI.

iii. Pursuant to the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the “**Conversion Act**”), the State legislature granted to the Authority the complete power, among other things, to administer and control that portion of NSTI consisting of the “**Trust Property**,” as described in the Conversion Act, in conformance with the public trust for commerce, navigation and fisheries (the “**Tidelands Trust**”) and subject to certain restrictions.

iv. The State Legislature authorized an exchange of the Tidelands Trust pursuant to Chapter 543, Statutes of 2004, as amended by Chapter 660, Statutes of 2007 and Chapter 208, Statutes of 2009 (the “**Exchange Act**”) in a manner to facilitate the productive reuse of the Islands as well as further the Tidelands Trust and the statutory trust created under the Conversion Act. In furtherance of the Exchange Act, the Authority and the State Lands Commission have negotiated that certain Trust Exchange Agreement for Treasure Island and Yerba Buena Island, (“**Exchange Agreement**”), setting forth the terms and conditions under which the public trust would be removed from portions of Treasure Island in exchange for portions of Yerba Buena Island not currently subject to the public trust.

v. The United States of America, acting by and through the Department of the Navy (“**Navy**”), and the Authority have entered into an Economic Conveyance Memorandum of Agreement that governs the terms and conditions for the transfer of NSTI from the Navy to the Authority (the “**Conveyance Agreement**”). Under the Conveyance Agreement, the Navy will convey NSTI to the Authority in phases after the Navy has completed environmental remediation and issued a Finding of Suitability to Transfer (“**FOST**”) for specified parcels of NSTI or portions thereof.

vi. On or about June 1, 2003, the Authority and Developer entered into an Exclusive Negotiating Agreement, as subsequently amended, setting forth the terms and conditions under which the Authority and Developer would negotiate (1) the DDA and related conveyance agreements governing the redevelopment of the Project Site, (2) one or more Lease Disposition and Development Agreements (collectively, the “**LDDA**”) and one or more 66-year ground leases (collectively, the “**Ground Lease**”) for certain portions of the Project Site that will remain subject to the Tidelands Trust, and (3) other necessary transaction documents for the conveyance, interim management and redevelopment of the Property, subject to completion of necessary environmental review under the California Environmental Quality Act (Public Resources Code Section 21000 *et. seq.* (“**CEQA**”) and, if applicable, the National Environmental Policy Act of 1969.



vii. Developer and the Authority have negotiated a DDA and key Transaction Documents, approved by the Board of Supervisors concurrently herewith, which Transaction Documents and Development Requirements, administered by the City and the Authority, will govern development of the Project Site. In addition to the vesting rights provided under this Agreement, Section 12 of the DDA provides that the Authority shall not approve, recommend or forward to the Board of Supervisors or any City Agency for approval any termination of or amendment, supplement, or addition to any component of the Development Requirements except as expressly described therein.

viii. Various City agencies retain a role in certain Subsequent Project Approvals, including without limitation, design review and approval under the Treasure Island / Yerba Buena Island Special Use District and the Design for Development, approval of Subdivision Maps, review of certain aspects of Major Phase and Sub Phase applications, implementation of public financing vehicles, which may include Infrastructure Financing Districts and Community Facilities Districts, issuance of building permits, and acceptance of dedications of infrastructure and public rights of way for maintenance and liability, and approval of art works on City owned property. The procedural role of City Agencies in the approvals process is governed by an Interagency Cooperation Agreement entered into between the Authority, the City and various City agencies and by Section 5.4 hereof with respect to the Planning Commission and Department.

ix. In light of the numerous public benefits provided by the Project, City has determined that the Project is a development for which a development agreement is appropriate. A Development Agreement will eliminate uncertainty in the City's land use planning for the Project Site and secure orderly development of the Project consistent with the DDA and other Development Requirements.

E. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Statute, the Tidelands Trust and Chapter 56 of the San Francisco Administrative Code (as modified with respect to the Project by the Board of Supervisors in approving this Development Agreement), the San Francisco Planning Code, the Enacting Ordinance (as hereinafter defined) and all other applicable laws and regulations.

F. Project's Compliance with CEQA. Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, any significant environmental impacts associated with the Project were described and analyzed, and alternatives and mitigation measures that could avoid or reduce those impacts were discussed in the Final Environmental Impact Report ("FEIR") certified by the Planning Commission and the Authority's Board of Directors on \_\_\_\_\_. **[No person appealed the FEIR to the Board of Supervisors as required under Section 31.16 of the San Francisco Administrative Code. The information in the FEIR has been considered by all entities with review and approval authority over this Agreement.]**

G. Planning Commission Hearing and Findings. On April 21, 2011, the Planning Commission held a public hearing on this Agreement, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Commission

made the CEQA Findings and adopted the Mitigation Measures, and determined that the Project and this Agreement are, as a whole and taken in their entirety, consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the “**General Plan Consistency Findings**”).

H. Board of Supervisors Hearing and Findings. On \_\_\_\_\_, 2011 the Board Land Use Committee, having received the Planning Commission’s final recommendation, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the full Board made the CEQA Findings required by CEQA and approved this Agreement, incorporating by reference the General Plan Consistency Findings.

I. Enacting Ordinance. On \_\_\_\_\_, 2011, the Board adopted Ordinance No. \_\_\_\_\_, approving this Agreement and authorizing the Planning Director to execute this Agreement on behalf of the City (the “**Enacting Ordinance**”). The Enacting Ordinance took effect on \_\_\_\_\_, 2011. The following land use approvals, entitlements, and permits relating to the Project were approved concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. \_\_\_\_\_), the Planning Code text amendment adopting the Treasure Island / Yerba Buena Island Special Use District which incorporates by reference the Treasure Island and Yerba Buena Island Design for Development (Board of Supervisors Ord. No. \_\_\_\_\_), the Zoning Map amendments (Board of Supervisors Ord. No. \_\_\_\_\_), the Treasure Island and Yerba Buena Island Subdivision Code (Board of Supervisors Ord. No. \_\_\_\_\_), the DDA (Board of Supervisors Ord. No. \_\_\_\_\_), the Public Trust Exchange Agreement (Board of Supervisors Resolution No. \_\_\_\_), and the Economic Development Conveyance Memorandum of Agreement (Board of Supervisors Resolution No. \_\_\_\_ ) and adoption of CEQA Findings and a Mitigation Monitoring and Reporting Program (“**MMRP**”).

## **I. AGREEMENT**

### **1. GENERAL PROVISIONS**

**1.1. Incorporation of Preamble, Recitals and Exhibits.** The preamble paragraph, Recitals and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

**1.2. Definitions.** In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the definition as set forth in the DDA.

1.2.1. “**Administrative Code**” shall mean the San Francisco Administrative Code.

1.2.2. “**Administrative Fee**” shall mean (i) a fee imposed City-Wide in effect at the time and payable upon the submission of an application for any permit or approval, which is intended to cover only the estimated actual costs to City or the Authority of processing that

application and inspecting work undertaken pursuant to that application, and is not an Exaction; and (ii) amounts payable to the City or the Authority by Developer under the terms of this Development Agreement, the DDA, LDDA or Ground Lease, or by a Vertical Developer under the terms of a Vertical DDA, to reimburse the City or the Authority for its administrative costs in processing applications for any permits or approvals required under the Development Requirements.

1.2.3. **“Agreement”** shall mean this Development Agreement.

1.2.4. **“Applicable Regulations”** means: (1) the Project Approvals; (2) to the extent consistent with the Project Approvals and not otherwise superseded by the Development Requirements or Authority’s powers as trustee under the Conversion Act, the Existing City Regulations (which include all provisions of the Building Construction Codes, i.e., the Parties understand and agree that no provision of the Building Construction Codes is inconsistent with or superseded by the Development Requirements); (3) Future Changes to Regulations, as and to the extent permitted by the DDA and this Development Agreement, (4) the Development Fees and Exactions, and such new or changed Development Fees and Exactions to the extent permitted under the DDA and this Development Agreement; (5) the Mitigation Measures; and (6) the Transaction Documents.

1.2.5. **“Board of Supervisors”** or **“Board”** shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.6. **“City”** shall mean the City and County of San Francisco, a municipal corporation. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.2.7. **“City Costs”** shall mean the actual and reasonable costs incurred by a City Agency in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in Section 6.3.2, but excluding work and fees covered by Administrative Fees.

1.2.8. **“City Regulations”** includes (i) those City land use codes (including, without limitation, those Sections of the Planning Code not superseded by the Treasure Island and Yerba Buena Island Special Use District (Planning Code Section 249.52), the Treasure Island and Yerba Buena Island Subdivision Code, Zoning Maps and the City General Plan), (ii) those ordinances, rules, regulations and official policies adopted thereunder and (iii) all those ordinances, rules, regulations, official policies and plans governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, development fees or exactions, terms and conditions of occupancy, or environmental guidelines or review, including those relating to hazardous substances, pertaining to the Project Site, as adopted and amended by the City from time to time.

1.2.9. **“City-Wide”** shall mean all privately-owned property within (1) the territorial limits of the City or (2) any designated use district or use classification of the City so

long as (a) any such use district or use classification includes a substantial amount of affected private property other than affected private property within the Project Site, and (b) the use district or use classification includes all private property within the use district or use classification that receives the general or special benefits of, or causes the burdens that occasion the need for, the new City Regulation or Development Fees or Exactions.

1.2.10. **“DDA”** shall mean the Disposition and Development Agreement for the Development of Naval Station Treasure Island between the Authority and Developer, dated as of \_\_\_\_\_ and approved by the Board of Supervisors concurrently herewith, as it may be amended from time to time.

1.2.11. **“Development Fees or Exactions”** shall mean a monetary or other exaction including in-kind contributions, other than a tax or special assessment or Administrative Fee, which is charged by the Authority or City in connection with any permit, approval, agreement or entitlement for Horizontal Improvements or Vertical Improvements or any requirement for the provision of land for construction of public facilities or Infrastructure or any requirement to provide or contribute to any public amenity or services. Development Fee or Exaction does not include the requirements of, and fees payable under, Building Codes in effect from time to time generally applicable on a City-Wide basis to similar land uses. or utility connection fees in effect from time to time generally applicable on a City-Wide basis to similar land uses.

1.2.12. **“Development Requirements”** means the Project Approvals and the Transaction Documents, as they may be amended from time to time.

1.2.13. **“Effective Date”** shall have the meaning set forth in Section 1.3.

1.2.14. **“Enacting Ordinance”** shall have the meaning set forth in Recital I.

1.2.15. **“Existing City Regulations”** shall mean those City Regulations in effect as of the adoption of the Enacting Ordinance.

1.2.16. **“FEIR”** shall have the meaning set forth in Recital F.

1.2.17. **“Future Changes to Applicable Regulations”** shall have the meaning ascribed to it in Section 2.3.1 hereof.

1.2.18. **“General Plan Consistency Findings”** as defined in Recital G above.

1.2.19. **“Ground Lease”** as defined in Recital D.vi above..

1.2.20. **“Horizontal Improvements”** shall mean the Infrastructure, Stormwater Management Controls and all other Improvements required to be constructed by the Developer under the terms of the DDA.

1.2.21. **“Improvements”** shall mean all Horizontal and Vertical Improvements to be constructed in or for the benefit of the Project Site.

1.2.22. **“Infrastructure”** means those items identified in the Infrastructure Plan attached to the DDA, including open space improvements (including park improvements and restrooms), streets, rails, sewer and storm drainage systems (excluding Stormwater Management Controls as defined in 1.2.33), water systems, street improvements, transportation and transit facilities, public services and community facilities, traffic signal systems, dry utilities and other improvements, any of which are to be constructed in or for the benefit of the Project Site or any other matters described in the Infrastructure Plan, including without limitation, all such work as is necessary to create Developable Lots as defined in the DDA.

1.2.23. **“LDDA”** as defined in Recital D.vi above.

1.2.24. **“Lot”** means a parcel of land within the Project Site that is a legal lot shown on a Subdivision Map.

1.2.25. **“Mitigation Measures”** means the mitigation measures applicable to the Project as set forth in the Mitigation Monitoring and Reporting Program adopted by the Board of Supervisors on \_\_\_\_\_, 2011 by Resolution No. \_\_\_\_\_.

1.2.26. **“Parties”** shall mean Developer and City, and their respective successors under this Agreement.

1.2.27. **“Planning Code”** shall mean the San Francisco Planning Code.

1.2.28. **“Planning Commission”** or **“Commission”** shall mean the Planning Commission of the City and County of San Francisco.

1.2.29. **“Project”** shall mean the development project at the Project Site as described in the DDA, which includes development of all Horizontal and Vertical Improvements.

1.2.30. **“Project Approvals”** shall mean the project approvals listed in Exhibit C.

1.2.31. **“Project Site”** shall have the meaning set forth in Recital C.

1.2.32. **“School Facilities Impact Fee** shall mean the sum payable to the San Francisco Unified School District pursuant to Government Code Section 65995.

1.2.33. **“Stormwater Management Controls”** means the facilities, both those to remain privately-owned and those to be dedicated to the City, that comprise the infrastructure and landscape system that is intended to manage the stormwater runoff associated with the Project, as required by the San Francisco stormwater management standards, the applicable NPDES permit, and/or state and federal law, and as described in the Infrastructure Plan. Stormwater Management Controls include but are not limited to: (i) swales and bio-swales (including plants and soils), (ii) bio-retention and bio-filtration systems (including plants and soils), (iii) constructed ponds and/or wetlands (vi) permeable paving systems, and (v) other facilities performing a stormwater control function constructed to comply with the San Francisco stormwater management standards, the applicable NPDES permit, and/or state and federal law. Stormwater Management Controls shall not mean Infrastructure that is part of the traditional

collection system such as catch basins, stormwater pipes, stormwater pump stations, outfalls, and other such facilities that are located in the public right-of-way

1.2.34. **“Subsequent Project Approvals”** shall mean any additional project approvals required to implement the Project after the initial Project Approvals, including, without limitation, all approvals required under the Treasure Island / Yerba Buena Island SUD, DRDAP, site permits and building permits and all approvals required by the Treasure Island and Yerba Buena Island Subdivision Code, including all Tentative and Final Transfer Maps, Tentative and Final Vesting Transfer Maps, Tentative and Final Vesting Subdivision Maps, Tentative and Final Subdivision Maps, and Parcel Maps

1.2.35. **“Term”** shall have the meaning set forth in Section 1.4.

1.2.36. **“Transaction Documents”** means the (1) DDA, Vertical Disposition and Development Agreements, Lease Disposition and Development Agreements and Ground Leases, and related conveyance agreements governing the development of the Project Site in accordance with the DDA, (2) the Land Acquisition Agreements, (4) the Interagency Cooperation Agreement, and (4) other necessary transaction documents for the conveyance, management and redevelopment of the Property.

1.2.37. **“Transportation Management Act”** means that certain state legislative act known as the Treasure Island Transportation Management Act (Stats. 2008, Ch. 317).

1.2.38. **“Transportation Program”** means the comprehensive transportation program for the Project Site, including all capital improvements, transit operations and financing mechanisms as more particularly described in the Transportation Plan adopted by TIDA concurrently with the Project Approvals.

1.2.39. **“Transferee”** as defined in the DDA.

1.2.40. **“Vertical DDA”** means a Disposition and Development Agreement between Developer or Authority and a Vertical Developer that governs the development of Vertical Improvements.

1.2.41. **“Vertical Developer”** means for a particular Lot or Vertical Improvement, the Person that is a party to the applicable Vertical DDA related thereto.

1.2.42. **“Vertical Improvement”** means an Improvement to be developed under the DDA or any Vertical DDA or Ground Lease that is not Infrastructure.

**1.3. Effective Date.** Pursuant to Section 56.14(f) of the Administrative Code, this Agreement shall take effect upon its execution by all Parties following the effective date of the Enacting Ordinance (the **“Effective Date”**).

**1.4. Term.** The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect thereafter for the same length of time as the term of the DDA so as to accommodate the phased development of the Project, unless earlier terminated as provided herein (the “**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

## **2. APPLICABLE LAW**

**2.1. Applicable Regulations.** Except as expressly provided in this Section 2, during the Term, the Project Approvals and any and all Subsequent Project Approvals (but only to the extent that the City would otherwise retain jurisdiction over issuing the applicable Project Approvals or Subsequent Project Approvals) shall be processed, considered, reviewed and acted upon in accordance with (i) the Applicable Regulations and any permitted Future Changes to Regulations, (ii) applicable laws, including CEQA, and (iii) this Agreement.

**2.2. [Reserved].**

**2.3. Future Changes to Regulations.**

2.3.1. Future changes to Applicable Regulations, City Regulations and any other ordinances, laws, rules, regulations, plans or policies adopted by the City or adopted by voter initiative after the Effective Date (“**Future Changes to Regulations**”) shall not apply to the Project and the Project Site to the extent that they would conflict with this Agreement or the Development Requirements or would otherwise be pre-empted by the Tidelands Trust as applied to the Project. In the event of such a conflict, the terms of this Agreement and the Development Requirements shall prevail. Nothing in this Agreement, however, shall preclude the City from applying Future Changes to Regulations to the Project Site for a development project that is not within the definition of the “**Project**” under this Agreement. City retains the right to impose Future Changes to Regulations that are not in conflict with this Agreement and the Development Requirements.

2.3.2. Without limitation, Future Changes to Regulations shall be deemed to be “in conflict with this Agreement and the Development Requirements” if they:

(a) alter or change any land use, including permitted or conditional uses, of the Project Site from that permitted under this Agreement and the Applicable Regulations;

(b) limit or reduce the height or bulk of the Project, or any portion thereof, or otherwise require any reduction in the height or bulk of individual proposed buildings or other improvements from that permitted under this Agreement and the Applicable Regulations;

(c) limit or reduce the density or intensity of the Project, or any portion thereof, or otherwise require any reduction in the square footage or number of proposed buildings, residential dwelling units, parking or loading spaces, or other improvements from that permitted under this Agreement and the Applicable Regulations;

(d) materially change the Project site plan as shown in the DDA Land Use Plan and Design for Development;

(e) materially limit or control the availability of public utilities, services or facilities or any privileges or right to public utilities, services, facilities or Infrastructure for the Project, including but not limited to water rights, water connection, sewage capacity rights, and sewer connections;

(f) except as otherwise provided herein, in any manner control, delay or limit the rate, timing, phasing or sequencing of the approval, development or construction of all or part of the Project as provided in the DDA;

(g) increase any Development Fees or Exactions, except as permitted by this Section 2;

(h) preclude or materially increase the cost of performance of or compliance with any provisions of the applicable Development Requirements;

(i) except as specifically provided in the Treasure Island Transportation Management Act (Stats. 2008, Ch. 317) (the “**Transportation Management Act**”) for setting of initial congestion pricing fees by the Board of Supervisors and Transportation Authority, impose any transportation-related revenue measures applicable to the Project Site, including, without limitation, congestion pricing, on-street or off-street parking fees, other parking-related revenue measures, and transit pass fees;

(j) Conflict with or materially increase the obligations of Developer, any Vertical Developer or their contractors under the Jobs and Equal Opportunity Policy attached to the DDA addressing construction or operations hiring adopted in connection with the DDA or any Vertical DDA; or

(k) adversely affect in any material respect (i) the continuing rights and obligations of Developer under this Agreement and the DDA (including, but not limited to, the Financing Plan and any Acquisition and Reimbursement Agreement), (ii) the Authority’s ability to satisfy its obligations to Developer under the DDA (including, but not limited to, the Financing Plan and any Acquisition and Reimbursement Agreement) or (iii) the amount or timing of any payments due to Developer from the Funding Sources under the Financing Plan (including, but not limited to, any Acquisition and Reimbursement Agreement).

2.3.3. The Developer may, in the exercise of its sole discretion, elect to have a Future Change to Regulation that conflicts with this Agreement applied to the Project or the Project Site by giving the City written notice of its election to have a Future Change to Regulation applied, in which case such Future Change to Regulation shall be deemed to be an Applicable Regulation. The foregoing notwithstanding, should the Authority subsequently approve any Future Change to Regulations (with or without Developer’s consent to the extent permitted under Section 12 of the DDA) which becomes an Applicable Regulation hereunder, such Future Change to Regulation shall not be binding on City as an Applicable Regulation without the City’s prior written approval.



## **2.4. Development Fees and Exactions.**

2.4.1. Existing Development Fees or Exactions. Except as provided in the following provisions of this Section 2.4, for the Term of this Agreement, the following Development Fees or Exactions that are in effect as of the Effective Date, and only the following, are applicable to the Project: (a) the School Facilities Impact Fee; and (b) the Water and Wastewater Capacity Charges imposed by the San Francisco Public Utilities Commission under the authority of the San Francisco Charter applicable to all new residential and commercial use on a City-Wide basis. The DDA requires Vertical Developers to pay to the Authority a public art fee and a Jobs-Housing Linkage fee, to comply with certain inclusionary housing requirements and if applicable, to pay a transient occupancy in-lieu fee on fractional interest development, all on the further terms and conditions set forth in the DDA and Vertical DDA.

2.4.2. New or Increased Development Fees or Exactions. Except as otherwise set forth herein, no increase in any Development Fees or Exactions and no new Development Fee or Exaction enacted by the City during the term of this Agreement shall be applicable to any Improvements within the Project Site. To the extent that any increase in any Development Fees or Exactions or new Development Fees or Exactions is permitted under this Section 2.4.2, any such increased or new Development Fee or Exaction shall apply only to the extent that such increased or new Development Fee or Exaction complies with all applicable law, including, without limitation the requirements of the Mitigation Fee Act (Government Code §§ 66000 *et seq.*).

2.4.2.1. Any increase in the School Facilities Impact Fee authorized by any change in state law at any time after the approval of this Plan shall apply to the Project.

2.4.2.2. Any increase in the Water or Wastewater Capacity Charges duly authorized by the San Francisco Public Utilities Commission under the San Francisco Charter at any time after the approval of this Plan shall apply to the Project

2.4.2.3. Any new or increased Development Fees or Exactions which become effective more than twenty (20) years following the date of issuance of the first Building Permit for Vertical Improvements in the Project Site shall apply to the Project only so long as such new or increased Development Fee or Exaction is (i) generally applicable on a City-Wide basis for similar land uses and (ii) not redundant as to the Project of a fee, dedication, program, requirement or facility that is imposed under the applicable Development Requirements, including without limitation, any fee, dedication, program, requirement or facility related to (A) affordable housing, (B) open space, (C) transportation; (D) child care; or (E) protecting against sea-level rise.

2.4.2.4. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed at the Effective Date. No amendment or addition to those provisions, which would materially affect the interpretation or enforceability of this Agreement, shall be applicable to this Agreement unless such amendment or addition is specifically required by the California Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected by the same unless the Parties mutually agree in

writing to amend the Agreement to permit such applicability. The Parties shall cooperate and shall undertake such actions as may be necessary to implement and reflect the intent of the Parties to allow and encourage development of the Project.

2.4.3. Applicability of Uniform Codes; Infrastructure Standards. Except as may be expressly provided in the Development Requirements, nothing in this Agreement shall preclude the City's application to the Project of (i) any provisions, requirements, rules, or regulations applicable City-wide that are contained in the California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the San Francisco Building Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes. In addition, nothing in this Agreement shall preclude the City's application to the Project of the City's then-current standards for Infrastructure for each Major Phase pursuant to then applicable City Requirements so long as (a) such standards for Infrastructure are in place, applicable City-Wide and imposed upon the Project concurrently with the approval of the applicable Major Phase Application and/or first Sub-Phase Application in that Major Phase (as those terms are defined in the DDA); (b) such standards for Infrastructure as applied to the applicable Major Phase are compatible with, and would not require the retrofit, removal, supplementation or reconstruction of, Infrastructure approved in prior Major Phases or Sub-Phases; and (c) if such Infrastructure standards deviate from those approved in prior Major Phase or Sub-Phase applications, such deviations would not materially increase the cost of the Project.

2.4.4. Protection of Public Health and Safety. Notwithstanding any provision in this Agreement to the contrary, City shall exercise its discretion under this Agreement and the Development Requirements in a manner which is consistent with the public health, safety and welfare. City shall retain, at all times, its authority to take any legally valid action necessary to protect the physical health and safety of the public, including, without limitation, authority to condition or deny a permit, approval or agreement or other entitlement or to change or adopt any new City Regulation, if required (a) to protect the physical health or safety of the residents in the Project Site, the adjacent community or the public ("**Public Health and Safety Exception**"), or (b) to comply with applicable federal or state law or regulations including, without limitation, changes in Existing City Regulations reasonably calculated to achieve new, more restrictive federal or state attainment standards applicable to the City for water quality, water supply, air quality, hazardous materials or otherwise relating to the physical environment where such City Regulations are generally applicable and proportionally applied to similar land uses on a City-Wide basis ("**Federal and State Law Exception**"). Any such new or increased Development Fee or Exaction shall be applied in a manner which is proportional to the impacts caused by the applicable development in the Project Site taking into account the equitable share of the cost of funding reasonable compliance with the applicable Public Health and Safety Exception or Federal and State Law Exception and the amount allocable to the impacts caused by development existing at the time of the enactment of such new or increased Development Fee or Exaction. Any new or increased Development Fee or Exaction that qualifies within the Public Health and Safety Exception or Federal and State Law Exception that is enacted for the protection or benefit of City residents overall (as opposed to the mitigation of project-related impacts which are addressed by the preceding sentence) shall be applied in a manner that bears a reasonable relationship to the development program and uses of the Project Site and shall be applied consistently City-Wide. In no event shall any Vertical Improvements be required to pay a

new or increased Development Fee or Exaction in connection with compliance with any Public Health and Safety Exception or Federal and State Law Exception which is not applied on a City-Wide basis to similar land uses. Except for emergency measures, City will meet and confer with Developer in advance of the adoption of such measures to the extent feasible, provided, however, that City shall retain the sole and final discretion with regard to the adoption of any new City Regulation in furtherance of the protection of the physical health and safety of the public as provided in this Section 2.4.6. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City can seek a judicial relief with respect to the matter.

2.4.5. CEQA. Nothing in this Agreement or the applicable Development Requirements shall be deemed to limit the City's or the Authority's ability to comply with CEQA, including any Mitigation Measures.

### **3. DEVELOPMENT OF THE PROJECT SITE**

**3.1. Development Rights.** Developer shall have the vested right to develop the Project Site in accordance with and subject to the provisions of this Agreement, the Development Requirements and any Subsequent Project Approvals, which shall control the overall design, development and construction of the Project and all improvements and appurtenances in connection therewith, including without limitation, the permitted uses on the Project Site, the density and intensity of uses, the maximum height and size of buildings, the number of allowable parking spaces and all Mitigation Measures required in order to minimize or eliminate material adverse environmental impacts of the Project. By stating that the terms and conditions of this Agreement, the Development Requirements and any Subsequent Project Approvals control the overall design, development and construction of the Project, this Agreement is consistent with the requirements of California Government Code Section 65865.2 (requiring a development agreement to state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes). The Developer agrees that all improvements on the Project Site shall be constructed in accordance with this Agreement, the Development Requirements and any Subsequent Project Approvals, and in accordance with all applicable laws.

**3.2. Compliance with CEQA.** The Developer acknowledges that the development of the Project and the Project Site is subject to compliance with CEQA, including the Mitigation and Monitoring Plan, and the CEQA Guidelines. To the extent that the Project will require the grant of Subsequent Project Approvals that are discretionary in nature, such Subsequent Project Approvals shall be subject to review by the City during public hearings to the extent required by applicable laws.

**3.3. Status of Approvals.** Concurrently with this Agreement, City and the Authority have approved and adopted the Project Approvals.

**3.4. Use and Density.** Pursuant to Section 65865.2 of the Development Agreement Statute, the Project Approvals and Subsequent Project Approvals shall not prevent development

of the Project for the uses and to the density or intensity of the development set forth in the Project Approvals or the Transaction Documents.

**3.5. Vested Rights: Permitted Uses and Density; Building Envelope.** By approving the Project Approvals, City has made a policy decision that the Project, as currently described and defined in the Project Approvals, is in the best interests of the City and promotes the public health, safety and general welfare. Accordingly, to the extent that the Project is required to obtain any Subsequent Project Approvals from the City, City shall not use its discretionary authority in considering any application for a Subsequent Project Approval to change the policy decisions reflected in the Project Approvals or otherwise to prevent or to delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Project Approvals (that conform to or implement the Project Approvals) shall be used to implement those policy decisions and shall be issued by the City so long as they comply with this Agreement, the Applicable Regulations and permitted Future Changes to Regulations, if applicable. Nothing herein is intended to limit the discretionary authority of the Board of Supervisors to consider appeals of Subsequent Project Approvals related to subdivision maps pursuant to the provisions of the Subdivision Map Act and the Treasure Island and Yerba Buena Island Subdivision Code, provided, however, that in exercising its discretion on any such appeal, the Board of Supervisors shall not exercise its discretionary authority to change the policy decisions reflected in the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals.

**3.6. Residential Land Use.** The residential land uses on the Project Site, including any affordable housing, shall be developed in accordance with the DDA, including the Housing Plan attached to the DDA.

**3.7. [Reserved]**

**3.8. Commencement of Construction; Development Timing.** Development of the Project Site is permitted to occur in phases. The Phasing Plan and Schedule of Performance incorporated into the DDA, as it may be modified from time to time in accordance with the DDA, shall govern the construction phasing and development timing of the Project, respectively.

**3.9. Subdivision Maps.**

3.9.1. Developer may from time to time file subdivision map applications with respect to some or all of the Project Site in accordance with the provisions in the DDA and the Treasure Island/Yerba Buena Island Subdivision Code. City shall exercise its discretion in reviewing such subdivision map applications in accordance with Section 3.5 hereof and the Treasure Island and Yerba Buena Island Subdivision Code, and shall approve such subdivision map applications so long as they comply with this Agreement, the Applicable Regulations and permitted Future Changes to Regulations, if applicable. Upon approval of each Tentative Transfer Map, Vesting Tentative Transfer Map, Tentative Map or Vesting Tentative Map (as those terms are defined in the Treasure Island and Yerba Buena Island Subdivision Code) to be approved for property within a Major Phase (each, a “**Tentative Map**”), the term of such Tentative Map shall be extended until the Termination of this Agreement notwithstanding any other City Law, provided that approvals obtained in the last five years of the Term shall extend

for the greater of (a) the Term of this Agreement or (b) the maximum applicable time provided for under City law. Notwithstanding anything in Section 66474.2 of the Subdivision Map Act or the Treasure Island and Yerba Buena Island Subdivision Code to the contrary, it shall be a condition to the approval of any Vesting Tentative Transfer Map or Vesting Tentative Map, that the ordinances, policies and standards applicable to the Vesting Tentative Transfer Map or Vesting Tentative Map shall be the Applicable Regulations and any Future Changes to Regulations permitted hereunder.

3.9.2. Vesting Tentative Maps. The Director of Public Works shall waive the submittal requirements for a vesting tentative transfer map set forth in section 1333.2(a)(2) through (5) of the City's Subdivision Code (incorporated by reference in section 1733.2(a) of the TI/YBI Subdivision Code), provided the vesting tentative transfer map application is otherwise complete and conforms to and is consistent with the Development Requirements. The Director of Public Works may also waive, in his or her sole discretion, one or more of the submittal requirements for a vesting tentative subdivision map set forth in section 1333.2(a)(2) through (5) of the City's Subdivision Code (incorporated by reference in section 1733.2(b) of the TI/YBI Subdivision Code), provided: (i) the vesting tentative subdivision map application is otherwise complete and conforms to and is consistent with the Development Requirements, and (ii) a Major Phase Approval has been granted for the property that is the subject of such map.

**3.10. Financing of Project Improvements.** The financing of improvements relating to the Project, including all infrastructure and utilities shall be as provided in the DDA and the Financing Plan attached hereto as Exhibit D, including, without limitation, requirements for providing adequate security for Infrastructure and Stormwater Management Controls pursuant to Article 8 of the Treasure Island and Yerba Buena Island Subdivision Code.

**3.11. Reservation or Dedication of Land for Public Use.** Development of the Project Site requires public facilities to support the operations and services and development of affordable housing. Developer shall make available, reserve or dedicate, as required, land or facilities as provided in the Parks and Open Space Plan, Community Facilities Obligations and the Housing Plan to support the construction, operations and services on the Project Site in accordance with the terms of the DDA.

**3.12. Treasure Island Transportation Revenues.** City acknowledges that pursuant to the Treasure Island Transportation Management Act (Stats. 2008, Chapt. 317) (the "**Transportation Act**"), the State legislature has authorized the formation of the Treasure Island Transportation Management Agency ("**TITMA**") to adopt and administer the Transportation Program on Treasure Island and Yerba Buena Island, including the congestion pricing and parking programs. The Act enables the Board of Supervisors to delegate to TITMA exclusive power to administer and collect all "non-transit" revenues generated by the Transportation Program (revenues excepting transit fares and purchase of transit passes, advertising revenues on facilities and vehicles maintained by the transit agencies, and other revenues directly generated in conjunction with the operation of transit services), and provides that no ordinance, charter provision, or other provision of local law purporting to impose any similar revenue measure, whether now existing or enacted in the future shall apply to Treasure Island or the Transportation Program. In compliance with the Transportation Management Act, the City acknowledges that upon formation of TITMA by the Board of Supervisors and the setting of the initial congestion

pricing fees as authorized under Section 1967.5 of the Transportation Act, the City and its departments, boards, and commissions are prohibited from exercising the exclusive powers delegated by the Board of Supervisors to TITMA in accordance with the Transportation Act with respect to Treasure Island and the Transportation Program. The Parties anticipate that the “non-transit” revenues generated from the Transportation Program will be paid directly to the TITMA, which will enter into agreements as needed with the San Francisco Municipal Transportation Agency and other City departments, as needed to implement the Transportation Program. If other City departments other than TITMA receive “non-transit” revenues directly from the Transportation Program (such as parking revenues), City shall cause all such revenues to be paid promptly to the TITMA for implementation of the Transportation Program except as may otherwise be agreed between the City department and the TITMA.

#### **4. OBLIGATIONS OF DEVELOPER**

**4.1. Cooperation by Developer.** Developer shall, in a timely manner, provide all documents, applications, plans and other information necessary for the City to comply with its obligations in accordance with the terms of the DDA, the DRDAP and the Interagency Cooperation Agreement.

**4.2. Nondiscrimination.** In the performance of this Agreement, Developer agrees not to discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender, identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes, against any City employee, employee of or applicant for employment with the Developer, or against any bidder or contractor for public works or improvements, for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by Developer. A similar provision shall be included in all subordinate agreements let, awarded, negotiated or entered into by Developer for the purposes of implementing this Agreement.

#### **4.3. Payment of Fees and Costs.**

**4.3.1. Payment of Fees and Exactions.** Developer shall timely pay all Development Fees and Exactions applicable to the Project or the Project Site in accordance with applicable law.

**4.3.2. Administrative Fees.** Nothing in this Agreement shall preclude or constrain City from charging and collecting an Administrative Fee, which shall be administered in accordance with Section 4.3.3 hereof, or any such fee which may be provided for in any disposition and development agreement applicable to the Project Site.

**4.3.3. Payment of Administrative Fees.** Developer shall timely pay to the City all Administrative Fees applicable to the processing or review of applications for the Project Approvals or the Subsequent Approvals under the Municipal Code. In connection with any environmental review relative to a Subsequent Approval, Developer shall reimburse City or pay directly all reasonable and actual costs relating to the hiring of consultants and the performing of

studies as may be necessary to perform such environmental review. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

4.3.4. Time and Manner for Payment of City Costs. Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Authority, quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement; provided, for subdivision, mapping and Infrastructure review matters coordinated by DPW, applicable City Agencies shall submit their invoices to DPW and DPW shall combine those invoices with DPW costs to submit one combined invoice for reimbursement. The Authority shall gather all such invoices so as to submit one combined City bill to Developer each quarter. Any City Costs incurred by the City shall be invoiced to the Authority within six (6) months of the date the City Cost is incurred. To the extent that a City Agency fails to submit such invoices, then the Authority or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

4.4. Hold Harmless and Indemnification of City. Developer shall indemnify, reimburse and save and hold harmless the City and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims (“Losses”) resulting directly or indirectly from this Agreement and Developer’s performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the Effective Date, and except to the extent such Losses are the result of the gross negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable attorneys’ fees and related costs, and the City’s cost of investigating any claims against the City.

4.5. Equal Opportunity and Employment and Training Program. In accordance with Administrative Code Section 56.7, this Agreement must include a detailed equal opportunity program and employment training program containing goals and a program for implementation. In compliance therewith, the DDA obligates Developer to comply with the Jobs and Equal Opportunity Program (the “EOP”), which sets forth the employment and contracting benefits that are proposed for the Project, including: (i) creating new construction and permanent employment opportunities, (ii) setting goals for the hiring of San Francisco residents and formerly homeless and economically disadvantaged individuals; (iii) setting goals for participation by small business enterprises (SBEs) under a program that is specific to the Project and that shall be administered by the Authority; and (iv) creating economic development opportunities and related support for TIHDI residents and member organizations. In addition, the EOP requires Developer to enter into a First Source Hiring Agreement in compliance with the City’s First Source Hiring Ordinance. In recognition of the specific requirements set forth in the EOP, the City hereby exempts the provisions of San Francisco Administrative Code Chapter 6 (other than the payment of prevailing wages, which is required) and Chapter 14B to the extent applicable to the Project.

## **5. OBLIGATIONS OF CITY**

**5.1. No Action to Impede Project Approvals.** City shall take no action nor impose any condition that would conflict with this Agreement or the Project Approvals. An action taken or condition imposed shall be deemed to be “in conflict with” this Agreement or the Project Approvals if such actions or conditions result in one or more of the circumstances identified in Section 2.3.2 of this Agreement.

**5.2. Expeditious Processing.** To the extent that a Subsequent Project Approval requires an action to be taken by the City, the City shall process such Subsequent Project Approvals in accordance with the procedures set forth in the Interagency Cooperation Agreement and Section 5.4 hereof.

**5.3. Processing During Third Party Litigation.** The filing of any third party lawsuit(s) against the City or Developer relating to this Agreement, the Project Approvals, the Subsequent Project Approvals, or other development issues affecting the Project or the Project Site, shall not delay or stop the development, processing or construction of the Project or the issuance of Subsequent Project Approvals unless the third party obtains a court order preventing the activity.

### **5.4. Provisions Related to Planning Commission and Planning Department Processing.**

5.4.1. Office Land Use. By Resolution No. \_\_\_\_\_, the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that office development promotes the public welfare, convenience and necessity, and in so doing considered the criteria of Planning Code Section 321(b)(3)(A)-(G). The findings contained in Resolution No. \_\_\_\_\_ are incorporated herein by reference and attached as Exhibit E to this Agreement. Because the office development contemplated by the Treasure Island / Yerba Buena Island SUD and Design for Development, subject to the limitations on square footage set forth in the DDA has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, shall be deemed to have been made for all specific office development projects undertaken pursuant to the Treasure Island / Yerba Buena Island SUD and Design for Development. No office development project contemplated by the Treasure Island / Yerba Buena Island SUD and Design for Development, subject to the limitations on square footage set forth in the DDA, may be disapproved either (i) for inconsistency with Planning Code Sections 320-325, or (ii) in favor of another office development project that is located outside the Project Site and subject to Planning Code Sections 320-325; provided, however, that for any office development within the Project Site subject to Planning Code Section 321, (x) no office development project shall be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, taking into account priority commitments for available annual office space previously granted by the Planning Commission to the development projects at Mission Bay (Planning Commission Resolution No. 14702) and Candlestick/Hunters Point (Planning Commission Resolution No. 18102); and (y) the Planning Commission shall consider the design of the particular office development project to confirm that it is consistent with the Planning



Commission's findings contained in Resolution No. \_\_\_\_\_ (the "**Office Allocation Resolution**"). Upon such determination, the Planning Commission shall issue a project authorization for such project. The requirements for Planning Commission approval described above shall be applicable unless application would be prohibited by California or local law. Before the Authority approves any application pursuant to Planning Code Section 249.52(g)(5)(a) that includes an office development that would require an allocation under Sections 101.1 and 320-325 of the Planning Code (Office Allocation), the Authority shall submit each such application to the Planning Commission prior to consideration by the Authority. The Authority and the Planning Department ("**Planning**") shall cooperate to act expeditiously and in conformance with the Office Allocation Resolution and the related provisions of the Treasure Island / Yerba Buena Island SUD and Design for Development regarding approval of office development.

5.4.2. Assistance in Design Review. Planning, at the request of the Authority, will provide staff to assist the Authority with review of submittals made to Authority under the DRDAP, as well as Schematic Design applications submitted to Authority pursuant to Planning Code Section 249.52(g)(5)(a) (collectively, "**Authority Applications**"). The Planning Director, or his or her designee, may review, at the Planning Director's option, such Authority Applications, or applicable portions thereof, and provide Planning's comments to the Authority within thirty (30) days of receipt of such Authority Application by the Planning Director.

5.4.3. General Plan Consistency Findings. In connection with the certification of the FEIR, the adoption of the Mitigation Measures and approval of the Treasure Island / Yerba Buena Island SUD and Design for Development, the Planning Commission made General Plan findings as required by the City's Charter that the Project, as a whole and in its entirety, is consistent with the General Plan and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the "**General Plan Consistency Finding**"). The General Plan Consistency Finding is intended to support all future approvals by the City, including those of the Planning Commission or Planning Department, that are consistent with the Treasure Island / Yerba Buena Island SUD and the Design for Development. Thus, to the maximum extent practicable subject to applicable law, Planning shall rely exclusively on the General Plan Consistency Findings when processing and reviewing all Subsequent Project Approvals, including but not limited to schematic review under the SUD, subdivision, public infrastructure acceptance, street vacations, and any other Project-related actions requiring General Plan determinations pursuant to State law or the Applicable City Regulations. In the event that Planning is required to make new General Plan consistency findings, as identified above, for a matter relating to the Project, it shall do so expeditiously and use good faith efforts to make or reject such findings within thirty (30) days of the matter being referred to Planning; provided however, that nothing shall prevent or limit the discretion of the City in connection with any Subsequent Project Approvals that, as a result of amendments to the Project Approvals, require new or revised General Plan consistency findings. In addition, the time limits for review as specified in this Subsection are not applicable to those General Plan consistency findings necessitated by or related to amendments to Project Approvals.

## 6. MUTUAL OBLIGATIONS

**6.1. Notice of Completion or Revocation.** Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Office of the Assessor/Recorder of the City and County of San Francisco, California.

**6.2. Estoppel Certificate.** Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that to the best of the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) the findings of the City with respect to the most recent Annual Review performed pursuant to Section 7 below.

6.2.1. A Party receiving a request under this Section 6.2 shall execute and return such certificate within thirty (30) days following receipt of the request. Failure by a Party within such thirty (30) days to either execute and return such certificate or provide a detailed written explanation of why the Party has failed to do so shall be deemed to be a Default following notice and cure as set forth in Section [10] of this Agreement.

6.2.2. Each Party acknowledges that third parties with a property interest in the Project Site, including any mortgagee, acting in good faith may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

### **6.3. Cooperation in the Event of Third-Party Challenge.**

6.3.1. Third Party Challenge. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, the Project Approvals or Subsequent Approvals, the adoption or certification of the FEIR, other actions taken pursuant to CEQA, or other approvals under state or City codes, statutes, codes, regulations, or requirements, and any combination thereof relating to the Project or any portion thereof (each, a "**Third-Party Challenge**"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

6.3.2. Developer Cooperation. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided, however*, (i) Developer

shall have the right to receive monthly invoices for all such costs, and (ii) Developer may elect to terminate this Agreement, and upon any such termination, Developer's and City's obligations to defend the Third-Party Challenge shall cease and Developer shall have no responsibility to reimburse any City defense costs incurred after such termination date. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

**6.4. Good Faith and Fair Dealing.** The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

**6.5. Other Necessary Acts.** Each Party shall execute, acknowledge and deliver to the other all further instruments and documents and shall take such further actions as may be reasonably necessary to carry out this Agreement in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

**6.6. Compliance with Financing Plan** Developer and the City shall each at all times comply with the applicable provisions of the Financing Plan, which is attached hereto as Exhibit D, and incorporated herein by this reference.

## **7. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE**

**7.1. Initiation of Review.** Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code as of the Effective Date, at the beginning of the second week of January following final adoption of this Agreement (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement.

**7.2. Review Procedure.** In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Director shall follow the process set forth in this section as of the Effective Date.

**7.3. Required Information from Developer.** Not more than sixty (60) days and not less than forty-five (45) days prior to the Annual Review Date, Developer shall provide a letter to the Planning Director containing evidence to show compliance with this Agreement. The Planning Director's review shall be limited to compliance with Developer's obligations under Section 4 and 6 of this Agreement and a determination that there exists no uncured Material Breach under the DDA after passage of all applicable cure periods thereunder. The letter from the Developer shall set forth in reasonable detail Developer's compliance with its obligations under Sections 4 and 6 of this Agreement. Developer may also provide an estoppel certificate or equivalent letter or instrument from the Authority which shall serve as conclusive proof binding on the City as to whether or not there exists any uncured Material Breaches under the DDA after passage of all applicable cure periods thereunder.

**7.4. City Report.** Within forty (40) days after Developer submits its letter, the Planning Director shall review the information submitted by Developer and all other available evidence on Developer's compliance with this Agreement. All such available evidence shall upon receipt of the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement. If Planning Director finds Developer in compliance, then the Planning Director shall proceed in the manner provided in Section 56.17(b) of the Administrative Code as that Section is in effect as of the Effective Date, attached hereto as Exhibit F. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date.

**7.5. Planning Director shall issue a Certificate of Compliance.** If Planning Director finds Developer is not in compliance, then the Planning Director shall proceed in the manner provided in Section 56.17(c) of the Administrative Code as that Section is in effect as of the Effective Date, subject further to the procedures set forth in Section 7, hereof. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date.

**7.6. Effect on Transferees.** If Developer has effected a transfer of a Major Phase under the DDA, then the annual review hereunder shall be conducted separately with respect to each Party holding the Major Phase and the Planning Director, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its actions separately with respect to each Party pursuant to Administrative Code Chapter 56 as that Section is in effect as of the Effective Date, as modified by Section 7.7 hereof. If the Board of Supervisors Terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that such Party has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

**7.7. Notice and Cure Rights.** Notwithstanding anything in Administrative Code Chapter 56, if the Planning Commission makes a finding of non-compliance, or if the Board of Supervisors overrules a Planning Commission finding of compliance, then before any proceedings may be undertaken to modify or terminate the Agreement under Administrative Code Section 56.17(f) or 56.18 as those sections are in effect as of the Effective Date, the Planning Commission or the Board of Supervisors, as applicable, shall first specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days and shall be reasonably related to the time necessary for Developer to adequately bring its performance into good faith compliance with the terms of this Agreement. If the areas of noncompliance specified by the Planning Commission or Board of Supervisors are not perfected within such reasonable time limits herein prescribed, then the Planning Commission or the Board of Supervisors may then by noticed hearing, terminate, modify or take such other actions as may be specified in Administrative Code Chapter 56 as that Section is in effect as of the Effective Date.

**7.8. Default.** The rights and powers of the City under this Section 9 are in addition to, and shall not limit, the rights of the City to Terminate or take other action under this Agreement on account of the Developer's commission of an event of Default.

## **8. AMENDMENT; TERMINATION**

**8.1. Amendment or Termination.** Except as otherwise provided herein, this Agreement may only be amended or terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56 of the Administrative Code as of the Effective Date as modified by Section 7.7 hereof.

**8.2. Amendment Exemptions.** No amendment of a Project Approval or Subsequent Project Approval, or the approval of a Subsequent Project Approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Subsequent Project Approval). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Project Approval or Subsequent Project Approval, the terms of this Development Agreement shall prevail.

**8.3. Extension Due to Legal Action, Referendum, or Excusable Delay.** The time for Developer's performance of its obligations hereunder shall be extended by reason of Excusable Delay to the extent permitted under the terms of the DDA.

## **9. TRANSFER OF ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE**

**9.1. Permitted Transfer of this Agreement.** Developer shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to a Transferee (as defined in the DDA) or a Vertical Developer in accordance with the terms and conditions governing Transfer set forth in the DDA. Upon the effective date of any Transfer permitted under the DDA, the Transferee shall be deemed a Party to this Agreement as to the Transferred Property. Any Vertical DDA, LDDA, Ground Lease or Assignment and Assumption Agreement that Transfers an interest in the Project Site shall require the Transferee to enter into a binding Development Agreement Assignment and Assumption acknowledging the Transferee's rights and obligations hereunder. Developer shall remain liable for all obligations and requirements under this Agreement after the effective date of the Transfer as to the Transferred Property only to the same extent that Developer retains liability under the terms of the DDA and as set forth in the Development Agreement Assignment and Assumption required under this Section 9.1. Notwithstanding anything to the contrary contained in this Agreement, a Default under this Agreement or any Vertical DDA, LDDA or Ground Lease, as applicable, by any Transferee or Vertical Developer (collectively, a "**Transferee Default**") shall not constitute a Default by Developer with respect to any other portion of the Project Site and such Transferee Default shall not entitle City to Terminate or modify this Agreement with respect to such other portion of the Project Site. The City is entitled to enforce each and every such obligation assumed by the Transferee directly against the Transferee as if the Transferee were an original

signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert any defense against the City's enforcement of performance of such obligation that is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between the Developer and the Transferee. **Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.**

9.2.1. Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), the rights and obligations of a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("**Mortgagee**") shall be identical to the rights and obligations provided to such Mortgagee under the terms and conditions of the DDA. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of the Developer under this Agreement. Any person, including a Mortgagee, who acquires title to all or any portion of the mortgaged property by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise shall succeed to all of the rights and obligations of the Developer under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Project Site to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Development Requirements.

9.2.2. If City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer under this Agreement. In accordance with Section 2924 of the California Civil Code, City hereby requests that a copy of any Notice of Default and a copy of any notice of sale under any mortgage or deed of trust be mailed to City at the address shown on the first page of this Agreement for recording.

9.2.3. A Mortgagee shall have the right, at its option, to cure any default or breach by the Developer under this Agreement within the same time period as Developer has to remedy or cause to be remedied any default or breach, plus an additional period of (i) ninety (90) days to cure a default or breach by the Developer to pay any sum of money required to be paid hereunder and (ii) one hundred eighty (180) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion. Mortgagee may add the cost of such cure to the indebtedness or other obligation evidenced by its mortgage, provided that if the breach or default is with respect to the construction of the Improvements on the Project Site, then the rights and obligations of such Mortgagee shall be identical to the rights and obligations afforded it under the DDA.

9.2.4. If at any time there is more than one mortgage constituting a lien on any portion of the Project Site, the lien of the Mortgagee prior in lien to all others on that portion of

the mortgaged property shall be vested with the rights under this Section 9.2.4 to the exclusion of the holder of any junior mortgage; provided that if the holder of the senior mortgage notifies the City that it elects not to exercise the rights sets forth in this Section 9.4, then each holder of a mortgage junior in lien in the order of priority of their respective liens shall have the right to exercise those rights to the exclusion of junior lien holders. Neither any failure by the senior Mortgagee to exercise its rights under this Agreement nor any delay in the response of a Mortgagee to any notice by the City shall extend Developer's or any Mortgagee's rights under this Section 9.2.4. For purposes of this Section 9.2.4, in the absence of an order of a court of competent jurisdiction that is served on the City, a then-current title report of a title company licensed to do business in the State of California and having an office in the City setting forth the order of priority of lien of the mortgages shall be reasonably relied upon by the City as evidence of priority.

**9.3. Constructive Notice.** Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site and undertakes any development activities at the Project Site is, and shall be, constructively deemed to have consented and agreed to, and is obligated by, all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

## **10. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION**

**10.1. Enforcement.** The only parties to this Agreement are the City and the Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

**10.2. Default.** For purposes of this Agreement, a Material Breach by the Developer under the DDA shall be considered a default under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee defaults under this Agreement or any Vertical DDA, LDDA or Ground Lease, as applicable, such default shall not constitute a default by Developer with respect to any other portion of the Project Site hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Project Site except to the extent that termination is allowed under the DDA. In addition, to the extent Developer pays Authority Costs to Authority that include payments owing to the City hereunder, Developer's payment of such costs to Authority shall fully satisfy Developer's obligation to pay City costs hereunder. Authority's failure to pay such sums to the appropriate City department shall not be considered a default hereunder.

### **10.3. Notice/Remedies for Default.**

#### **10.3.1. Remedies.**

**10.3.1.1. Specific Performance.** Upon a Material Breach, the aggrieved Party may institute proceedings to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this Agreement) by the Party in breach of its obligations, including without limitation, seeking an order to compel payment of

amounts due under this Agreement. Nothing in this Section 10.3 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

10.3.1.2. Limited Damages. The Parties have determined that except as set forth in this Section 10.3.1.2 (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by any Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages are particularly appropriate remedies for enforcement of this Agreement. Except as otherwise expressly provided below to the contrary (and then only to the extent of actual damages and not consequential, punitive or special damages, each of which is hereby waived by the Parties), no Party would have entered into or become a Party to this Agreement if it were to be liable in damages under this Agreement. Consequently, the Parties agree that no Party shall be liable in damages to any other Party by reason of the provisions of this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: actual damages only shall be available as to breaches that arise out of (a) the failure to pay sums as and when due (1) under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, (b) the failure to make payment due under any indemnity in this Agreement, (c) the requirement to pay attorneys' fees and costs as set forth in Section 10.4 or when required by a arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.3.1.3. Certain Exclusive Remedies/Termination. The exclusive remedies for any Material Breach that does not result in a termination of the DDA shall be those remedies exercisable by the Authority in Section 16.3.3 of the DDA: For any Material Breach that results in the termination of the DDA or a partial termination of the DDA (e.g., if the City exercises its right of reverter), the City's remedy hereunder shall be the right to terminate this Agreement concurrent with the termination of the DDA, but only as to that portion of the Property for which the Authority terminated the DDA.

10.3.2. Attorneys' Fees. Should legal action be brought by either Party against the other for default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs.

**10.4. No Waiver.** Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies; nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

**10.5. Future Changes to Regulations.** Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is cancelled by mutual agreement of the Parties as provided for under Section 8.1, above, or terminated pursuant to Section 8.1 or 10.3,



above, either party may enforce this Agreement notwithstanding any Future Changes to Regulations.

**10.6. Joint and Several Liability.** If the Developer consists of more than one person or entity with respect to a legal parcel within the Project Site, then the obligations of each person and/or entity shall be joint and several.

**10.7. Costa Hawkins Waiver.** The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 *et seq.*; the “**Costa-Hawkins Act**”) does not and in no way shall limit or otherwise affect the restriction of rental charges for the Authority Housing Units or the Inclusionary Units developed pursuant to the DDA (including the Housing Plan)(as those terms are defined in the DDA). This Agreement falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Developer, on behalf of itself and all of its successors and assigns, including all Vertical Developers, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Developer’s obligations set forth in the Housing Plan related to Inclusionary Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include the following language, in substantially the following form, in all Assignment and Assumption Agreements under the Development Agreement:

“The Development Agreement and DDA (including the Housing Plan) includes regulatory concessions and significant public investment in the Project. The regulatory concessions and public investment include, without limitation, a direct financial contribution of net tax increment, the conveyance of real property without payment, and other forms of public assistance specified in California Government Code section 65915 *et seq.* These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Developer and Vertical Developers, as contemplated by California Government Code section 65915. In consideration of the direct financial contribution and other forms of public assistance described above, the parties understand and agree that the Costa-Hawkins Act does not and shall not apply to the Inclusionary Units developed at the Project under the DDA.”

The Parties understand and agree that the City would not be willing to enter into this Agreement without the agreement and waivers as set forth in this Section 10.7.

## **11. MISCELLANEOUS PROVISIONS**

**11.1. Entire Agreement.** This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

**11.2. Binding Covenants; Run With the Land.** From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and

obligations contained in this Agreement shall be binding upon the Parties and, subject to Section 9 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the limitations on Transfers set forth in Section 9 above, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468.

**11.3. Applicable Law and Venue.** This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

**11.4. Construction of Agreement.** The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or the DDA shall be deemed to refer to this Agreement or the DDA as amended from time to time pursuant to the provisions of this Agreement or the DDA, as applicable, whether or not the particular reference refers to such possible amendment.

**11.5. Project Is a Private Undertaking; No Joint Venture or Partnership.**

11.5.1. The development proposed to be undertaken by Developer on the Project Site is a private development, except for that portion to be devoted to public improvements to be constructed by Developer in accordance with the DDA. City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of the Developer contained in this Agreement or in the DDA, Development Requirements, or other Transaction Documents.

11.5.2. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. The Developer is not a state or governmental actor with respect to any activity conducted by the Developer hereunder.

**11.6. Recordation.** Pursuant to Section 65868.5 of the Development Agreement Statute and Section 56.16 of the San Francisco Administrative Code as of the Effective Date, the

Clerk of the Board shall have a copy of the Agreement recorded with the County Recorder within ten (10) days after execution of the Agreement or any amendment thereto, with costs to be borne by Developer.

**11.7. Signature in Counterparts.** This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

**11.8. Time of the Essence.** Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

**11.9. Notices.** Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City: Office of Economic and Workforce Development  
City Hall, Rm. 448  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: Director

With a copy to Office of the City Attorney  
City Hall, Rm. 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: Real Estate/Finance

To Developer: Treasure Island Community Development, LLC  
c/o Lennar  
1 California Street, Suite 2700  
San Francisco, CA 94111  
Attn: Stephen Proud

With a copy to Wilson Meany Sullivan  
4 Embarcadero Center, Suite 3330  
San Francisco, CA 94111  
Attn: Kheay Loke

With a copy to: Gibson Dunn & Crutcher LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
Attn: Neil H. Sekhri

**11.10. Limitations on Actions.** Pursuant to Section 56.19 of the San Francisco Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 of the Administrative Code shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

**11.11. Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

**11.12. Sunshine.** The Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Government Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, and City will attempt to maintain the confidentiality to the extent permitted by law.

**11.13. MacBride Principles.** The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Corporation acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

**11.14. Tropical Hardwood and Virgin Redwood.** The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

[SIGNATURES ON FOLLOWING PAGE]

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

**CITY**

CITY AND COUNTY OF SAN FRANCISCO, a  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

DENNIS J. HERRERA,  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Deputy City Attorney

Approved on \_\_\_\_\_

Board of Supervisors Ordinance No. \_\_\_\_\_

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

**DEVELOPER**

TREASURE ISLAND COMMUNITY  
DEVELOPMENT, LLC,  
a California limited liability company

By: UST Lennar HW Scala SF Joint Venture,  
a Delaware general partnership  
its co-Managing Member

By: \_\_\_\_\_  
Name: Kofi Bonner  
Its: Authorized Representative

By: KSWM Treasure Island, LLC,  
a California limited liability company  
its co-Managing Member

By: WMS Treasure Island  
Development I, LLC,  
a Delaware limited liability company  
its Member

By: Wilson Meany Sullivan LLC,  
a California limited liability company  
its Sole Member and Manager

By: \_\_\_\_\_  
Name: Chris Meany  
Title: Co-Managing Member

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**CONSENT TO DEVELOPMENT AGREEMENT**  
**San Francisco Municipal Transportation Agency**

The Municipal Transportation Agency of the City and County of San Francisco (“**SFMTA**”) has reviewed the Development Agreement between the City and Treasure Island Community Development, LLC, a California limited liability company (the “**Development Agreement**”), relating to the proposed Treasure Island / Yerba Buena Island development project to which this Consent to Development Agreement (this “**SFMTA Consent**”) is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Development Agreement, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to the Development Agreement as it relates to matters under SFMTA jurisdiction.

By executing this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City’s Charter.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through the SAN  
FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: \_\_\_\_\_  
NATHANIEL P. FORD,  
Executive Director

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

San Francisco Municipal Transportation Agency Resolution No. \_\_\_\_\_  
Approved \_\_\_\_\_.

**CONSENT TO DEVELOPMENT AGREEMENT**  
**San Francisco Public Utilities Commission**

The Public Utilities Commission of the City and County of San Francisco (the “SFPUC”) has reviewed the Development Agreement to which this Consent to Development Agreement (this “**SFPUC Consent**”) is attached and incorporated. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering the Development Agreement and utility-related Mitigation Measures at a duly noticed public hearing, consented to the Development Agreement as it relates to matters under SFPUC jurisdiction, and delegates to the SFPUC General Manager or his or her designee any future approvals of the SFPUC under the Development Agreement, subject to applicable law including the City’s Charter.

By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit the exclusive authority of the SFPUC as set forth in Article XIII B of the City’s Charter.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through the SAN  
FRANCISCO PUBLIC UTILITY COMMISSION

By: \_\_\_\_\_  
EDWARD HARRINGTON,  
General Manager

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

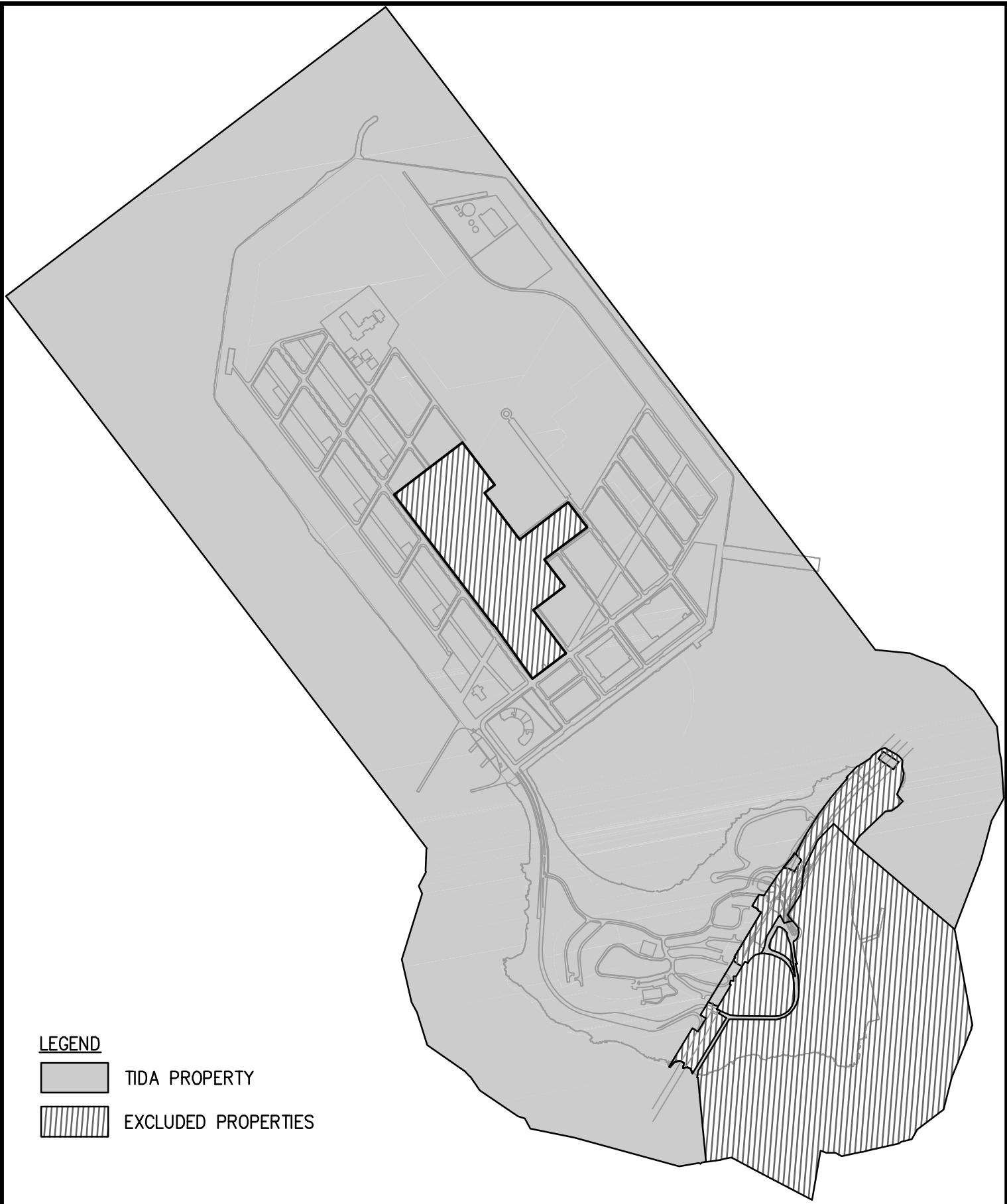
By: \_\_\_\_\_  
Deputy City Attorney

San Francisco Public Utility Commission Resolution No. \_\_\_\_\_  
Approved \_\_\_\_\_

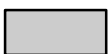


**Exhibit A**

**Property Diagram (Included and Excluded Land)**



LEGEND



TIDA PROPERTY



EXCLUDED PROPERTIES



0 1200

**Exhibit B**  
**Legal Description**



ENGINEERS  
SURVEYORS  
PLANNERS

April 6, 2011

**LEGAL DESCRIPTION  
FOR PROJECT SITE**

All that real property situate in the City of San Francisco, County of San Francisco, State of California, being all of the lands shown as "TREASURE ISLAND NAVAL STATION PER CIVIL CASE 22164-G FILED APRIL 3, 1944" on that certain Record of Survey filed for record July 15, 2003 in Book AA of Maps at pages 85 through 95, inclusive, and all of the lands shown as "TRANSFERRED TO THE U.S. DEPT. OF LABOR MARCH 3, 1998", as shown on said Record of Survey, and all of the lands shown on the map entitled "Map and Metes and Bounds Description of United States Military and Naval Reservations, Yerba Buena (Goat) Island, California, including land ceded by the State of California by Act of the Legislature of the State of California, approved March 9, 1897 (Stat. Cal., 1897, p. 74)," filed April 12, 1934, in Book N of Maps, at Page 14, in the Office of the County Recorder of said City and County of San Francisco, more particularly described as follows:

**BEGINNING** at Station "GOAT" as shown on said Record of Survey; thence along the southwesterly line of said Treasure Island Naval Station as shown on said Record of Survey, North 26°51'13" West 7999.44 feet to the **TRUE POINT OF BEGINNING**;

thence along the northwesterly line of said Treasure Island Naval Station, North 63°08'47" East 4499.68 feet;

thence along the northeasterly line of said Treasure Island Naval Station, South 26°51'13" East 7619.52 feet to a point 899.94 feet northerly offshore beyond the meander line shown on said Record of Survey;

thence along a line 899.94 feet (300 yards) offshore beyond said meander line, the following eleven (11) courses:

- 1) South 73°55'17" East 326.55 feet;
- 2) South 58°23'25" East 355.15 feet;
- 3) South 39°25'22" East 354.20 feet;
- 4) South 22°34'19" East 401.01 feet;
- 5) South 03°59'45" West 242.83 feet;
- 6) South 01°04'17" East 75.77 feet;
- 7) South 06°35'45" West 361.72 feet;



- 8) South  $39^{\circ}14'49''$  West 240.16 feet;
- 9) South  $25^{\circ}37'46''$  West 387.12 feet;
- 10) South  $61^{\circ}38'51''$  West 5.31 feet;
- 11) South  $24^{\circ}04'50''$  West 30.21 feet;

thence leaving last said line, North  $65^{\circ}55'10''$  West 1359.59 feet to the intersection with the general northeasterly line of Parcel 57935-1, as said parcel is described in that certain Quitclaim Deed, recorded on October 26, 2000 as Document Number 2000-G855531-00, San Francisco County Records, on the course described in said document as "North  $35^{\circ}38'09''$  West 272.50 feet;"

thence along said general northeasterly line of last said Parcel 57935-1 the following eight (8) courses:

- 1) North  $35^{\circ}38'09''$  West 79.58 feet;
- 2) South  $54^{\circ}21'17''$  West 208.53 feet;
- 3) South  $37^{\circ}04'28''$  West 290.15 feet;
- 4) South  $18^{\circ}33'18''$  West 102.16 feet;
- 5) South  $13^{\circ}55'49''$  West 67.09 feet;
- 6) South  $22^{\circ}18'03''$  West 88.67 feet;
- 7) South  $42^{\circ}09'33''$  West 229.65 feet;
- 8) along last said northeasterly line and its southeasterly projection, South  $29^{\circ}09'38''$  East 160.32 feet;

thence South  $45^{\circ}23'45''$  West 10.05 feet to the beginning of a non-tangent curve to the right from which point a radial line, from the curve to the radius point, bears South  $76^{\circ}28'42''$  West;

thence along said curve having a radius of 90.99 feet, through a central angle of  $83^{\circ}09'49''$ , and an arc length of 132.07 feet to a point of reverse curvature;

thence along said curve having a radius of 10.00 feet, through a central angle of  $57^{\circ}10'03''$ , and an arc length of 9.98 feet to a point of compound of curvature;



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thence along said curve having a radius of 213.77 feet, through a central angle of  $10^{\circ}16'00''$ , and an arc length of 38.30 feet;

thence South  $2^{\circ}21'28''$  West, 98.84 feet to the beginning of a tangent curve to the left and a point hereinafter referred to as **POINT "A"**;

thence along said curve having a radius of 265.00 feet, through a central angle of  $11^{\circ}22'51''$  and an arc length of 52.64 feet;

thence South  $9^{\circ}10'23''$  East, 15.39 feet;

thence North  $89^{\circ}20'17''$  West, 14.87 feet;

thence South  $00^{\circ}52'35''$  East, 112.76 feet;

thence South  $2^{\circ}12'50''$  West, 24.72 feet;

thence South  $3^{\circ}49'35''$  West, 21.00 feet;

thence South  $8^{\circ}24'24''$  West, 101.83 feet to the beginning of a tangent curve to the right and a point hereinafter referred to as **POINT "B"**;

thence along said curve having a radius of 276.66 feet, through a central angle of  $61^{\circ}05'20''$ , and an arc length of 294.98 feet;

thence South  $83^{\circ}22'55''$  West, 81.45 feet;

thence North  $78^{\circ}57'27''$  West, 444.07 feet;

thence South  $41^{\circ}31'43''$  West, 565.39 feet;

thence South  $21^{\circ}39'43''$  West, 919.34 feet to a point 899.94 feet southerly offshore beyond the meander line shown on said Record of Survey;

thence along a line 899.94 feet (300 yards) offshore beyond said meander line, the following eighteen (18) courses:

- 1) North  $64^{\circ}19'07''$  West 1030.34;
- 2) North  $67^{\circ}51'05''$  West 419.65 feet;
- 3) North  $17^{\circ}25'07''$  West 107.80 feet;
- 4) North  $61^{\circ}36'55''$  West 68.75 feet;
- 5) North  $45^{\circ}33'55''$  West 432.38 feet;



- 6) North 24°02'59" West 157.87 feet;
- 7) North 42°15'03" West 18.49 feet;
- 8) North 31°19'05" West 54.47 feet;
- 9) North 44°55'02" West 436.06 feet;
- 10) North 6°29'08" West 319.55 feet;
- 11) North 17°21'13" West 111.31 feet;
- 12) North 2°26'10" West 414.66 feet;
- 13) North 27°34'47" East 644.94 feet;
- 14) North 11°37'07" West 79.32 feet;
- 15) North 36°22'46" East 148.22 feet;
- 16) North 5°46'49" East 10.89 feet;
- 17) North 12°27'09" East 208.62 feet;
- 18) North 25°47'47" East 5.07 feet to a point on the southwesterly line of said Treasure Island Naval Station as shown on said Record of Survey;

thence along said southwesterly line, North 26°51'13" West 6544.74 feet to the **TRUE POINT OF BEGINNING**, containing 46,067,312 square feet or 1,057.56 acres, more or less.

**EXCEPTING THEREFROM:**

All that real property situate in the City of San Francisco, County of San Francisco, State of California, being a portion of the lands shown on the map entitled "Map and Metes and Bounds Description of United States Military and Naval Reservations, Yerba Buena (Goat) Island, California, including land ceded by the State of California by Act of the Legislature of the State of California, approved March 9, 1897 (Stat. Cal., 1897, p. 74)," filed April 12, 1934, in Book N of Maps, at Page 14, in the Office of the County Recorder of said City and County of San Francisco, more particularly described as follows:

**BEGINNING** at the hereinabove described **POINT "A"**;



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thence North  $88^{\circ}03'13''$  West, 28.35 feet to the **TRUE POINT OF BEGINNING OF EXCEPTION ONE**;

thence South  $1^{\circ}56'47''$  West, 184.31 feet to a point of cusp, and the beginning of a non-tangent curve to the left, from which a point a radial line bears North  $89^{\circ}51'11''$  West;

thence northerly along said curve having a radius of 265.10 feet, through a central angle of  $10^{\circ}57'56''$ , and an arc length of 50.74 feet;

thence North  $10^{\circ}49'07''$  West, 88.08 feet;

thence North  $60^{\circ}19'59''$  East, 10.32 feet to the beginning of a non-tangent curve to the left from which point a radial line, from the curve to the radius point, bears South  $60^{\circ}19'59''$  West;

thence northwesterly along said curve having a radius of 295.00 feet, through a central angle of  $30^{\circ}31'28''$ , and an arc length of 157.16 feet;

thence North  $60^{\circ}11'29''$  West, 50.87 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 48.00 feet, through a central angle of  $77^{\circ}11'00''$ , and an arc length of 64.66 feet to a point of compound curvature;

thence along said curve having a radius of 138.32 feet, through a central angle of  $21^{\circ}22'42''$ , and an arc length of 51.61 feet;

thence North  $38^{\circ}22'13''$  East, 129.93 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 20.00 feet, through a central angle of  $83^{\circ}34'39''$ , and an arc length of 29.17 feet to a point of compound curvature;

thence along said curve having a radius of 138.55 feet, through a central angle of  $36^{\circ}51'39''$ , and an arc length of 89.14 feet;

thence South  $4^{\circ}47'46''$  West, 26.05 feet to the beginning of a non-tangent curve to the right from which point a radial line, from the curve to the radius point, bears South  $70^{\circ}28'54''$  West;

thence southerly along said curve having a radius of 245.00 feet, through a central angle of  $21^{\circ}27'53''$ , and an arc length of 91.78 feet;

thence South  $1^{\circ}56'47''$  West, 117.09 feet to the **TRUE POINT OF BEGINNING OF EXCEPTION ONE**, containing an area of 43,110 square feet, more or less.





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ALSO EXCEPTING THEREFROM:

All that real property situate in the City of San Francisco, County of San Francisco, State of California, being a portion of the lands shown on the map entitled "Map and Metes and Bounds Description of United States Military and Naval Reservations, Yerba Buena (Goat) Island, California, including land ceded by the State of California by Act of the Legislature of the State of California, approved March 9, 1897 (Stat. Cal., 1897, p. 74)," filed April 12, 1934, in Book N of Maps, at Page 14, in the Office of the County Recorder of said City and County of San Francisco, more particularly described as follows:

**BEGINNING** at the herein above described **POINT "B"**;

thence North  $80^{\circ}39'40''$  West, 44.49 feet to the **TRUE POINT OF BEGINNING OF EXCEPTION TWO**;

thence South  $9^{\circ}20'20''$  West, 48.64 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 185.35 feet, through a central angle of  $91^{\circ}49'36''$  and an arc length of 297.06 feet;

thence North  $78^{\circ}50'04''$  West, 351.42 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 285.61 feet, through a central angle of  $26^{\circ}23'13''$  and an arc length of 131.53 feet;

thence North  $52^{\circ}26'51''$  West, 76.59 feet;

thence North  $41^{\circ}31'00''$  East, 266.16 feet;

thence North  $76^{\circ}16'12''$  West, 13.61 feet;

thence North  $26^{\circ}41'18''$  East, 37.94 feet;

thence South  $76^{\circ}50'42''$  East, 28.28 feet;

thence North  $09^{\circ}59'58''$  East, 42.80 feet;

thence South  $77^{\circ}39'22''$  East, 22.03 feet;

thence North  $41^{\circ}31'00''$  East, 163.48 feet;

thence South  $48^{\circ}29'00''$  East, 32.00 feet;

thence North  $41^{\circ}31'00''$  East, 28.30 feet to the beginning of a tangent curve to the right;



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thence along said curve having a radius of 148.81 feet, through a central angle of  $47^{\circ}50'31''$  and an arc length of 124.26 feet to the beginning of a non-tangent curve to the right from which point a radial line, from the curve to the radius point, bears South  $2^{\circ}49'04''$  West;

thence along said curve having a radius of 227.02 feet, through a central angle of  $26^{\circ}23'36''$  and an arc length of 104.58 feet;

thence South  $60^{\circ}47'20''$  East, 51.83 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 230.74 feet, through a central angle of  $30^{\circ}32'59''$  and an arc length of 123.03 feet to a point of compound curvature;

thence along said curve having a radius of 284.53 feet, through a central angle of  $39^{\circ}34'41''$  and an arc length of 196.54 feet;

thence South  $9^{\circ}20'20''$  West, 81.25 feet to the **TRUE POINT OF BEGINNING OF EXCEPTION TWO**, containing an area of 318,644 square feet or 7.32 acres, more or less.

**ALSO EXCEPTING THEREFROM:**

All that real property situate in the City of San Francisco, County of San Francisco, State of California, being all of Parcel 57935-1, as said parcel is described in that certain Quitclaim Deed, recorded on October 26, 2000 as Document Number 2000-G855531-00, San Francisco County Records, containing an area of 857,326 square feet or 19.68 acres, more or less.

**ALSO EXCEPTING THEREFROM:**

All that real property situate in the City of San Francisco, County of San Francisco, State of California, being all of the "Transfer to the United States Department of Labor dated March 3, 1998- Jobs Corps Center" as shown on that certain Record of Survey filed for record July 15, 2003 in Book AA of Maps at pages 85 through 95, inclusive, San Francisco County Records, containing an area of 1,591,837 square feet or 36.54 acres, more or less.

Total area = 43,256,395 square feet, or 993.03 acres, more or less.

Basis of Bearings: Bearings are based on the North American Datum of 1983, Epoch 1991.35. All distances in this description are grid distances. Multiply expressed



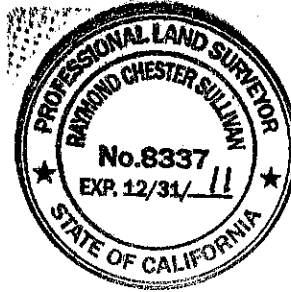
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distances by 1.00007026 to obtain ground distances. Areas shown are calculated using grid distances.

This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

*Raymond C Sullivan*  
Raymond C. Sullivan, PLS 8337



**END OF DESCRIPTION**

J:\Sur06\060077\Legal & Plat\Development Area\2011-04-06\TI DPA LEGAL.doc

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--  
Parcel name: TI OVERALL

North:	2130254.4618	East :	6017210.8936
Line	Course: N 63-08-47 E	Length:	4499.68
	North: 2132287.0236	East :	6021225.3440
Line	Course: S 26-51-13 E	Length:	7619.52
	North: 2125489.1656	East :	6024667.1767
Line	Course: S 73-55-17 E	Length:	326.55
	North: 2125398.7256	East :	6024980.9529
Line	Course: S 58-23-25 E	Length:	355.15
	North: 2125212.5807	East :	6025283.4121
Line	Course: S 39-25-22 E	Length:	354.20
	North: 2124938.9679	East :	6025508.3425
Line	Course: S 22-34-19 E	Length:	401.01
	North: 2124568.6759	East :	6025662.2674
Line	Course: S 03-59-45 W	Length:	242.83
	North: 2124326.4362	East :	6025645.3461
Line	Course: S 01-04-17 E	Length:	75.77
	North: 2124250.6795	East :	6025646.7628
Line	Course: S 06-35-45 W	Length:	361.72
	North: 2123891.3537	East :	6025605.2139
Line	Course: S 39-14-49 W	Length:	240.16
	North: 2123705.3674	East :	6025453.2733
Line	Course: S 25-37-46 W	Length:	387.12
	North: 2123356.3360	East :	6025285.8249
Line	Course: S 61-38-51 W	Length:	5.31
	North: 2123353.8143	East :	6025281.1519
Line	Course: S 24-04-50 W	Length:	30.21
	North: 2123326.2334	East :	6025268.8256
Line	Course: N 65-55-10 W	Length:	1359.59
	North: 2123880.9742	East :	6024027.5570
Line	Course: N 35-38-09 W	Length:	79.58
	North: 2123945.6518	East :	6023981.1912
Line	Course: S 54-21-17 W	Length:	208.53
	North: 2123824.1277	East :	6023811.7313
Line	Course: S 37-04-28 W	Length:	290.15
	North: 2123592.6307	East :	6023636.8137
Line	Course: S 18-33-18 W	Length:	102.16
	North: 2123495.7811	East :	6023604.3049
Line	Course: S 13-55-49 W	Length:	67.09
	North: 2123430.6643	East :	6023588.1536
Line	Course: S 22-18-03 W	Length:	88.67
	North: 2123348.6264	East :	6023554.5060
Line	Course: S 42-09-33 W	Length:	229.65
	North: 2123178.3908	East :	6023400.3667
Line	Course: S 29-09-38 E	Length:	160.32
	North: 2123038.3901	East :	6023478.4840
Line	Course: S 45-23-45 W	Length:	10.05
	North: 2123031.3329	East :	6023471.3286
Curve	Length: 132.07	Radius:	90.99

Delta: 83-09-49	Tangent: 80.73
Chord: 120.78	Course: S 28-03-37 W
Course In: S 76-28-42 W	Course Out: S 20-21-29 E
RP North: 2123010.0583	East : 6023382.8607
End North: 2122924.7518	East : 6023414.5148
Curve Length: 9.98	Radius: 10.00
Delta: 57-10-03	Tangent: 5.45
Chord: 9.57	Course: S 41-03-30 W
Course In: S 20-21-29 E	Course Out: N 77-31-32 W
RP North: 2122915.3764	East : 6023417.9937
End North: 2122917.5365	East : 6023408.2298
Curve Length: 38.30	Radius: 213.77
Delta: 10-16-00	Tangent: 19.20
Chord: 38.25	Course: S 07-20-28 W
Course In: S 77-31-32 E	Course Out: N 87-47-32 W
RP North: 2122871.3613	East : 6023616.9532
End North: 2122879.5964	East : 6023403.3419
Line Course: S 02-12-28 W	Length: 98.84
North: 2122780.8298	East : 6023399.5342
Curve Length: 52.64	Radius: 265.00
Delta: 11-22-51	Tangent: 26.41
Chord: 52.55	Course: S 03-28-58 E
Course In: S 87-47-32 E	Course Out: S 80-49-37 W
RP North: 2122770.6211	East : 6023664.3375
End North: 2122728.3756	East : 6023402.7265
Line Course: S 09-10-23 E	Length: 15.39
North: 2122713.1824	East : 6023405.1799
Line Course: N 89-20-17 W	Length: 14.87
North: 2122713.3542	East : 6023390.3109
Line Course: S 00-52-35 E	Length: 112.76
North: 2122600.6074	East : 6023392.0356
Line Course: S 02-12-50 W	Length: 24.72
North: 2122575.9058	East : 6023391.0807
Line Course: S 03-49-35 W	Length: 21.00
North: 2122554.9526	East : 6023389.6793
Line Course: S 08-24-24 W	Length: 101.83
North: 2122454.2168	East : 6023374.7919
Curve Length: 294.98	Radius: 276.66
Delta: 61-05-20	Tangent: 163.25
Chord: 281.20	Course: S 38-57-04 W
Course In: N 81-35-36 W	Course Out: S 20-30-16 E
RP North: 2122494.6639	East : 6023101.1045
End North: 2122235.5317	East : 6023198.0130
Line Course: S 83-22-55 W	Length: 81.45
North: 2122226.1446	East : 6023117.1058
Line Course: N 78-57-27 W	Length: 444.07
North: 2122311.2005	East : 6022681.2575
Line Course: S 41-31-43 W	Length: 565.39
North: 2121887.9355	East : 6022306.4074
Line Course: S 21-39-43 W	Length: 919.34
North: 2121033.5212	East : 6021967.0518
Line Course: N 64-19-07 W	Length: 1030.34
North: 2121480.0359	East : 6021038.4910
Line Course: N 67-51-05 W	Length: 419.65

	North: 2121638.2483	East : 6020649.8074
Line	Course: N 17-25-07 W Length: 107.80	
	North: 2121741.1049	East : 6020617.5374
Line	Course: N 61-36-55 W Length: 68.75	
	North: 2121773.7879	East : 6020557.0528
Line	Course: N 45-33-55 W Length: 432.38	
	North: 2122076.4955	East : 6020248.3125
Line	Course: N 24-02-59 W Length: 157.87	
	North: 2122220.6612	East : 6020183.9759
Line	Course: N 42-15-03 W Length: 18.49	
	North: 2122234.3476	East : 6020171.5436
Line	Course: N 31-19-05 W Length: 54.47	
	North: 2122280.8811	East : 6020143.2307
Line	Course: N 44-55-02 W Length: 436.06	
	North: 2122589.6672	East : 6019835.3355
Line	Course: N 06-29-08 W Length: 319.55	
	North: 2122907.1722	East : 6019799.2415
Line	Course: N 17-21-13 W Length: 111.31	
	North: 2123013.4156	East : 6019766.0413
Line	Course: N 02-26-10 W Length: 414.66	
	North: 2123427.7008	East : 6019748.4160
Line	Course: N 27-34-47 E Length: 644.94	
	North: 2123999.3547	East : 6020047.0119
Line	Course: N 11-37-07 W Length: 79.32	
	North: 2124077.0494	East : 6020031.0371
Line	Course: N 36-22-46 E Length: 148.22	
	North: 2124196.3823	East : 6020118.9509
Line	Course: N 05-46-49 E Length: 10.89	
	North: 2124207.2170	East : 6020120.0476
Line	Course: N 12-27-09 E Length: 208.62	
	North: 2124410.9292	East : 6020165.0324
Line	Course: N 25-47-47 E Length: 5.07	
	North: 2124415.4939	East : 6020167.2387
Line	Course: N 26-51-13 W Length: 6544.74	
	North: 2130254.4724	East : 6017210.8977

Perimeter: 31635.80 Area: 46,067,312 sq. ft. 1,057.56 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0114 Course: N 21-11-15 E

Error North: 0.01062 East : 0.00412

Precision 1: 2,775,068.42

Parcel name: TI EXCEPTION ONE

North: 2122781.7905 East : 6023371.2081  
Line Course: S 01-56-47 W Length: 184.31  
North: 2122597.5869 East : 6023364.9482  
Curve Length: 50.74 Radius: 265.10  
Delta: 10-57-56 Tangent: 25.45  
Chord: 50.66 Course: N 05-20-09 W  
Course In: N 89-51-11 W Course Out: N 79-10-53 E  
RP North: 2122598.2668 East : 6023099.8490  
End North: 2122648.0261 East : 6023360.2372  
Line Course: N 10-49-07 W Length: 88.08  
North: 2122734.5406 East : 6023343.7046  
Line Course: N 60-19-59 E Length: 10.32  
North: 2122739.6486 East : 6023352.6718  
Curve Length: 157.16 Radius: 295.00  
Delta: 30-31-28 Tangent: 80.49  
Chord: 155.31 Course: N 44-55-45 W  
Course In: S 60-19-59 W Course Out: N 29-48-31 E  
RP North: 2122593.6361 East : 6023096.3412  
End North: 2122849.6049 East : 6023242.9870  
Line Course: N 60-11-29 W Length: 50.87  
North: 2122874.8926 East : 6023198.8476  
Curve Length: 64.66 Radius: 48.00  
Delta: 77-11-00 Tangent: 38.31  
Chord: 59.88 Course: N 21-35-59 W  
Course In: N 29-48-31 E Course Out: N 73-00-29 W  
RP North: 2122916.5418 East : 6023222.7086  
End North: 2122930.5692 East : 6023176.8040  
Curve Length: 51.61 Radius: 138.32  
Delta: 21-22-42 Tangent: 26.11  
Chord: 51.31 Course: N 27-40-52 E  
Course In: S 73-00-29 E Course Out: N 51-37-47 W  
RP North: 2122890.1469 East : 6023309.0858  
End North: 2122976.0078 East : 6023200.6407  
Line Course: N 38-22-13 E Length: 129.93  
North: 2123077.8750 East : 6023281.2936  
Curve Length: 29.17 Radius: 20.00  
Delta: 83-34-39 Tangent: 17.87  
Chord: 26.66 Course: N 80-09-33 E  
Course In: S 51-37-47 E Course Out: N 31-56-52 E  
RP North: 2123065.4601 East : 6023296.9739  
End North: 2123082.4308 East : 6023307.5569  
Curve Length: 89.14 Radius: 138.55  
Delta: 36-51-39 Tangent: 46.17  
Chord: 87.61 Course: S 39-37-18 E  
Course In: S 31-56-52 W Course Out: N 68-48-31 E  
RP North: 2122964.8668 East : 6023234.2437  
End North: 2123014.9505 East : 6023363.4247

Line Course: S 04-47-46 W Length: 26.05  
     North: 2122988.9917      East : 6023361.2466  
 Curve Length: 91.78      Radius: 245.00  
     Delta: 21-27-53      Tangent: 46.44  
     Chord: 91.25      Course: S 08-47-10 E  
     Course In: S 70-28-54 W      Course Out: S 88-03-13 E  
     RP North: 2122907.1351      East : 6023130.3256  
     End North: 2122898.8139      East : 6023375.1843  
 Line Course: S 01-56-47 W Length: 117.09  
     North: 2122781.7914      East : 6023371.2074

Perimeter: 1140.91   Area: 43,110 sq. ft. 0.99 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0012      Course: N 40-11-10 W  
     Error North: 0.00088      East : -0.00075  
 Precision 1: 950,758.33

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 --  
 Parcel name: TI EXCEPTION TWO

    North: 2122461.4338      East : 6023330.8930  
 Line Course: S 09-20-20 W Length: 48.64  
     North: 2122413.4385      East : 6023323.0000  
 Curve Length: 297.06      Radius: 185.35  
     Delta: 91-49-36      Tangent: 191.36  
     Chord: 266.27      Course: S 55-15-08 W  
     Course In: N 80-39-40 W      Course Out: S 11-09-56 W  
     RP North: 2122443.5159      East : 6023140.1066  
     End North: 2122261.6743      East : 6023104.2146  
 Line Course: N 78-50-04 W Length: 351.42  
     North: 2122329.7248      East : 6022759.4464  
 Curve Length: 131.53      Radius: 285.61  
     Delta: 26-23-13      Tangent: 66.95  
     Chord: 130.38      Course: N 65-38-27 W  
     Course In: N 11-09-56 E      Course Out: S 37-33-09 W  
     RP North: 2122609.9287      East : 6022814.7532  
     End North: 2122383.4985      East : 6022640.6773  
 Line Course: N 52-26-51 W Length: 76.59  
     North: 2122430.1792      East : 6022579.9571  
 Line Course: N 41-31-00 E Length: 266.16  
     North: 2122629.4699      East : 6022756.3780  
 Line Course: N 76-16-12 W Length: 13.61  
     North: 2122632.7002      East : 6022743.1570  
 Line Course: N 26-41-18 E Length: 37.94  
     North: 2122666.5982      East : 6022760.1972  
 Line Course: S 76-50-42 E Length: 28.28  
     North: 2122660.1621      East : 6022787.7351  
 Line Course: N 09-59-58 E Length: 42.80  
     North: 2122702.3119      East : 6022795.1668  
 Line Course: S 77-39-22 E Length: 22.03



	North: 2122697.6024	East : 6022816.6875
Line	Course: N 41-31-00 E Length: 163.48	
	North: 2122820.0101	East : 6022925.0483
Line	Course: S 48-29-00 E Length: 32.00	
	North: 2122798.7993	East : 6022949.0087
Line	Course: N 41-31-00 E Length: 28.30	
	North: 2122819.9893	East : 6022967.7670
Curve	Length: 124.26	Radius: 148.81
	Delta: 47-50-31	Tangent: 66.01
	Chord: 120.68	Course: N 65-26-15 E
	Course In: S 48-29-00 E	Course Out: N 00-38-29 W
RP	North: 2122721.3524	East : 6023079.1904
End	North: 2122870.1531	East : 6023077.5246
Curve	Length: 104.58	Radius: 227.02
	Delta: 26-23-36	Tangent: 53.23
	Chord: 103.65	Course: S 73-59-08 E
	Course In: S 02-49-04 W	Course Out: N 29-12-40 E
RP	North: 2122643.4076	East : 6023066.3644
End	North: 2122841.5569	East : 6023177.1567
Line	Course: S 60-47-20 E Length: 51.83	
	North: 2122816.2623	East : 6023222.3954
Curve	Length: 123.03	Radius: 230.74
	Delta: 30-32-59	Tangent: 63.01
	Chord: 121.58	Course: S 45-30-51 E
	Course In: S 29-12-40 W	Course Out: N 59-45-39 E
RP	North: 2122614.8661	East : 6023109.7876
End	North: 2122731.0692	East : 6023309.1309
Curve	Length: 196.54	Radius: 284.53
	Delta: 39-34-41	Tangent: 102.38
	Chord: 192.66	Course: S 10-27-01 E
	Course In: S 59-45-39 W	Course Out: S 80-39-40 E
RP	North: 2122587.7769	East : 6023063.3167
End	North: 2122541.6052	East : 6023344.0755
Line	Course: S 09-20-20 W Length: 81.25	
	North: 2122461.4321	East : 6023330.8908

Perimeter: 2221.34 Area: 318,644 sq. ft. 7.32 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0028 Course: S 51-43-00 W

Error North: -0.00171 East : -0.00217

Precision 1: 793,332.14

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Parcel name: TI EXCEPTION THREE

North:	2121973.1969	East :	6022183.3392
Line Course:	N 20-28-47 E	Length:	10.82
North:	2121983.3330	East :	6022187.1248
Line Course:	N 49-39-09 W	Length:	34.22
North:	2122005.4878	East :	6022161.0447
Line Course:	N 83-36-06 W	Length:	55.27
North:	2122011.6471	East :	6022106.1189
Line Course:	S 54-11-51 W	Length:	70.72
North:	2121970.2764	East :	6022048.7623
Line Course:	N 62-57-47 W	Length:	8.39
North:	2121974.0902	East :	6022041.2892
Line Course:	N 41-31-00 E	Length:	425.30
North:	2122292.5390	East :	6022323.1942
Line Course:	S 48-29-00 E	Length:	62.00
North:	2122251.4431	East :	6022369.6175
Line Course:	N 41-31-00 E	Length:	145.49
North:	2122360.3806	East :	6022466.0538
Line Course:	N 48-29-00 W	Length:	62.00
North:	2122401.4766	East :	6022419.6305
Line Course:	N 41-31-00 E	Length:	636.96
North:	2122878.4086	East :	6022841.8317
Line Course:	N 48-29-00 W	Length:	7.10
North:	2122883.1147	East :	6022836.5155
Line Course:	N 41-31-00 E	Length:	487.47
North:	2123248.1142	East :	6023159.6291
Line Course:	N 48-29-00 W	Length:	37.50
North:	2123272.9706	East :	6023131.5504
Line Course:	N 41-31-00 E	Length:	9.50
North:	2123280.0839	East :	6023137.8474
Line Course:	N 48-29-00 W	Length:	67.61
North:	2123324.8984	East :	6023087.2235
Line Course:	N 41-31-00 E	Length:	125.15
North:	2123418.6060	East :	6023170.1777
Line Course:	S 71-22-28 E	Length:	50.28
North:	2123402.5475	East :	6023217.8243
Curve Length:	456.78	Radius:	3120.08
Delta:	8-23-17	Tangent:	228.80
Chord:	456.37	Course:	N 46-37-16 E
Course In:	S 47-34-23 E	Course Out:	N 39-11-06 W
RP North:	2121297.5868	East :	6025520.8744
End North:	2123715.9918	East :	6023549.5255
Line Course:	N 36-28-00 E	Length:	29.56
North:	2123739.7640	East :	6023567.0946
Line Course:	S 53-32-00 E	Length:	13.12
North:	2123731.9661	East :	6023577.6458
Curve Length:	868.01	Radius:	3018.37
Delta:	16-28-37	Tangent:	437.02
Chord:	865.03	Course:	N 44-42-19 E
Course In:	S 53-31-59 E	Course Out:	N 37-03-22 W

RP North:	2121937.9710	East :	6026005.0186
End North:	2124346.7683	East :	6024186.1584
Line Course:	N 37-03-22 W	Length:	9.88
North:	2124354.6530	East :	6024180.2047
Curve Length:	128.33	Radius:	3028.21
Delta:	2-25-41	Tangent:	64.17
Chord:	128.32	Course:	N 54-09-28 E
Course In:	S 37-03-22 E	Course Out:	N 34-37-41 W
RP North:	2121938.0029	East :	6026004.9945
End North:	2124429.7904	East :	6024284.2241
Line Course:	N 55-22-19 E	Length:	17.00
North:	2124439.4506	East :	6024298.2127
Line Course:	S 88-47-09 E	Length:	12.64
North:	2124439.1827	East :	6024310.8498
Line Course:	N 67-07-09 E	Length:	134.38
North:	2124491.4318	East :	6024434.6562
Line Course:	N 49-16-20 E	Length:	38.77
North:	2124516.7279	East :	6024464.0368
Line Course:	N 63-52-28 E	Length:	86.93
North:	2124555.0066	East :	6024542.0853
Line Course:	N 79-31-40 E	Length:	43.70
North:	2124562.9495	East :	6024585.0574
Line Course:	S 50-29-09 E	Length:	145.95
North:	2124470.0860	East :	6024697.6530
Line Course:	S 31-56-07 E	Length:	59.57
North:	2124419.5322	East :	6024729.1632
Line Course:	S 14-02-11 W	Length:	61.54
North:	2124359.8296	East :	6024714.2374
Line Course:	S 04-27-24 E	Length:	66.60
North:	2124293.4310	East :	6024719.4126
Line Course:	S 18-24-11 W	Length:	60.78
North:	2124235.7594	East :	6024700.2244
Line Course:	S 33-17-47 W	Length:	148.53
North:	2124111.6118	East :	6024618.6858
Line Course:	S 30-34-41 E	Length:	84.67
North:	2124038.7162	East :	6024661.7585
Line Course:	S 54-11-06 W	Length:	72.22
North:	2123996.4552	East :	6024603.1945
Line Course:	S 66-22-18 W	Length:	64.58
North:	2123970.5714	East :	6024544.0286
Line Course:	N 87-45-43 W	Length:	59.70
North:	2123972.9028	East :	6024484.3741
Line Course:	S 56-32-26 W	Length:	320.36
North:	2123796.2734	East :	6024217.1054
Line Course:	N 65-55-10 W	Length:	207.60
North:	2123880.9785	East :	6024027.5722
Line Course:	N 35-38-09 W	Length:	79.58
North:	2123945.6561	East :	6023981.2064
Line Course:	S 54-21-17 W	Length:	208.53
North:	2123824.1320	East :	6023811.7465
Line Course:	S 37-04-28 W	Length:	290.15
North:	2123592.6350	East :	6023636.8290
Line Course:	S 18-33-18 W	Length:	102.16
North:	2123495.7854	East :	6023604.3201

Line Course: S 13-55-49 W Length: 67.09  
     North: 2123430.6686 East : 6023588.1688  
 Line Course: S 22-18-03 W Length: 88.67  
     North: 2123348.6307 East : 6023554.5212  
 Line Course: S 42-09-33 W Length: 229.65  
     North: 2123178.3951 East : 6023400.3819  
 Line Course: S 29-09-38 E Length: 69.62  
     North: 2123117.5989 East : 6023434.3048  
 Line Course: S 85-41-23 W Length: 81.26  
     North: 2123111.4915 East : 6023353.2747  
 Line Course: N 16-33-18 W Length: 82.21  
     North: 2123190.2937 East : 6023329.8501  
 Line Course: S 41-31-00 W Length: 11.48  
     North: 2123181.6979 East : 6023322.2407  
 Line Course: S 83-43-52 W Length: 8.44  
     North: 2123180.7763 East : 6023313.8512  
 Line Course: S 41-31-00 W Length: 221.26  
     North: 2123015.1050 East : 6023167.1917  
 Line Course: S 21-28-58 W Length: 108.00  
     North: 2122914.6080 East : 6023127.6398  
 Line Course: S 41-31-00 W Length: 60.33  
     North: 2122869.4351 East : 6023087.6508  
 Curve Length: 10.15 Radius: 227.02  
     Delta: 2-33-43 Tangent: 5.08  
     Chord: 10.15 Course: N 85-54-05 W  
     Course In: S 05-22-47 W Course Out: N 02-49-04 E  
     RP North: 2122643.4151 East : 6023066.3663  
     End North: 2122870.1606 East : 6023077.5265  
 Curve Length: 124.26 Radius: 148.81  
     Delta: 47-50-31 Tangent: 66.01  
     Chord: 120.68 Course: S 65-26-15 W  
     Course In: S 00-38-29 E Course Out: N 48-29-00 W  
     RP North: 2122721.3599 East : 6023079.1923  
     End North: 2122819.9968 East : 6022967.7689  
 Line Course: S 41-31-00 W Length: 28.30  
     North: 2122798.8069 East : 6022949.0106  
 Line Course: N 48-29-00 W Length: 32.00  
     North: 2122820.0177 East : 6022925.0502  
 Line Course: S 41-31-00 W Length: 163.48  
     North: 2122697.6099 East : 6022816.6894  
 Line Course: N 77-39-22 W Length: 22.03  
     North: 2122702.3194 East : 6022795.1687  
 Line Course: S 09-59-58 W Length: 42.80  
     North: 2122660.1696 East : 6022787.7370  
 Line Course: N 76-50-42 W Length: 28.28  
     North: 2122666.6057 East : 6022760.1991  
 Line Course: S 26-41-18 W Length: 37.94  
     North: 2122632.7078 East : 6022743.1588  
 Line Course: S 76-16-12 E Length: 13.61  
     North: 2122629.4775 East : 6022756.3799  
 Line Course: S 41-31-00 W Length: 266.16  
     North: 2122430.1867 East : 6022579.9590  
 Line Course: S 52-26-44 E Length: 40.09  
     North: 2122405.7513 East : 6022611.7413

Line	Course: S 41-31-00 W	Length: 27.51	
	North: 2122385.1528		East : 6022593.5067
Line	Course: S 48-29-00 E	Length: 82.00	
	North: 2122330.8001		East : 6022654.9052
Line	Course: S 41-31-00 W	Length: 614.77	
	North: 2121870.4831		East : 6022247.4124
Line	Course: N 11-05-08 W	Length: 47.99	
	North: 2121917.5777		East : 6022238.1851
Line	Course: N 52-03-08 W	Length: 36.41	
	North: 2121939.9677		East : 6022209.4732
Line	Course: S 87-01-51 W	Length: 39.36	
	North: 2121937.9289		East : 6022170.1661
Line	Course: N 20-28-47 E	Length: 37.66	
	North: 2121973.2087		East : 6022183.3424
Line	Course: N 63-26-06 W	Length: 0.00	
	North: 2121973.2087		East : 6022183.3424

Perimeter: 8890.20 Area: 857,326 sq. ft. 19.68 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0122 Course: N 15-16-38 E

Error North: 0.01182 East : 0.00323

Precision 1: 728,705.74

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Parcel name: TI EXCEPTION FOUR

	North: 2126370.0204		East : 6021168.4186
Line	Course: N 26-50-27 W	Length: 1545.00	
	North: 2127748.5687		East : 6020470.8301
Line	Course: N 62-58-50 E	Length: 809.93	
	North: 2128116.5141		East : 6021192.3582
Line	Course: S 26-50-27 E	Length: 504.02	
	North: 2127666.7951		East : 6021419.9301
Line	Course: S 63-09-33 W	Length: 124.50	
	North: 2127610.5816		East : 6021308.8432
Line	Course: S 26-50-27 E	Length: 549.65	
	North: 2127120.1486		East : 6021557.0176
Line	Course: N 63-11-40 E	Length: 576.30	
	North: 2127380.0392		East : 6022071.3896
Line	Course: S 26-47-45 E	Length: 292.20	
	North: 2127119.2160		East : 6022203.1171
Line	Course: S 63-14-35 W	Length: 506.20	
	North: 2126891.3214		East : 6021751.1187
Line	Course: S 26-50-27 E	Length: 318.77	

	North: 2126606.8943	East : 6021895.0477
Line	Course: S 63-14-50 W	Length: 370.50
	North: 2126440.1168	East : 6021564.2071
Line	Course: S 26-50-27 E	Length: 508.75
	North: 2125986.1774	East : 6021793.9146
Line	Course: S 63-13-20 W	Length: 398.15
	North: 2125806.7983	East : 6021438.4620
Line	Course: N 25-25-40 W	Length: 624.66
	North: 2126370.9458	East : 6021170.2498
Line	Course: S 63-09-33 W	Length: 2.05
	North: 2126370.0202	East : 6021168.4207

Perimeter: 7130.68    Area: 1,591,837 sq. ft. 36.54 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

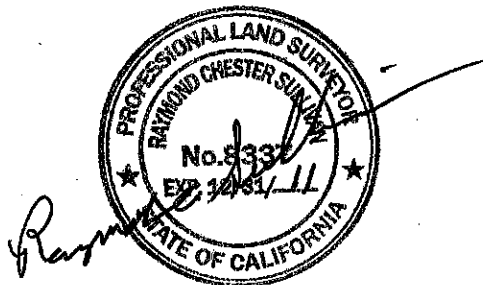
Error Closure: 0.0021

Course: S 84-03-56 E

Error North: -0.00022

East : 0.00211

Precision 1: 3,395,561.90



## Exhibit C

### Project Approvals

- ☐ Certification of Environmental Impact Report, State Clearinghouse No. \_\_\_\_\_  
(Planning Commission Resolution No. \_\_\_\_\_; TIDA Resolution No. \_\_\_\_\_)
- ☐ Development Agreement (Board of Supervisors Ordinance No. \_\_\_\_\_)
- ☐ Disposition and Development Agreement (TIDA Resolution No. \_\_\_\_\_; Board of Supervisors Ordinance No. \_\_\_\_\_)
- ☐ Design for Development (D4D) (Planning Commission Resolution No. \_\_\_\_\_; Board of Supervisors Ordinance No. \_\_\_\_\_)
- ☐ Interagency Cooperation Agreement (ICA) (TIDA Resolution No. \_\_\_\_\_; SFMTA Resolution No. \_\_\_\_\_; DPW Resolution No. \_\_\_\_\_; SFPUC Resolution No. \_\_\_\_\_)
- ☐ Amendment to the San Francisco General Plan (Board of Supervisors Ordinance No. \_\_\_\_\_)
- ☐ Amendments to the San Francisco Planning Code, Including Adopting the Treasure Island / Yerba Buena Island Special Use District (Board of Supervisors Ordinance No. \_\_\_\_\_)
- ☐ Amendment to the San Francisco Zoning Code and Zoning Map (Board of Supervisors Ordinance No. \_\_\_\_\_)
- ☐ Mitigation Monitoring and Reporting Program (TIDA Resolution No. \_\_\_\_\_; Board of Resolution No. \_\_\_\_\_; Planning Commission Resolution No. \_\_\_\_\_)
- ☐ Treasure Island Subdivision Ordinance (Board of Supervisors Ordinance No. \_\_\_\_\_)

**Exhibit D**  
**Financing Plan**



**Exhibit D**

**FINANCING PLAN**

**(TREASURE ISLAND/YERBA BUENA ISLAND)**

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## **LIST OF ATTACHMENTS**

Attachment A.	Form of Acquisition and Reimbursement Agreement
Attachment B.	Expected Categories of Island Wide Costs

## **FINANCING PLAN (TREASURE ISLAND/YERBA BUENA ISLAND)**

This FINANCING PLAN (Treasure Island/Yerba Buena Island) (the “**Financing Plan**”) implements and is part of both the DDA and the City DA. As used in this Financing Plan, capitalized terms used herein have the definitions given to them in Section 7.2.

### **II. OVERVIEW**

#### **1. Project Purposes; Project Accounts**

**1.1. Funding Goals. Developer and Authority are entering into the DDA, and Developer and City are entering into the City DA, both of which include this Financing Plan as an exhibit, with the following financial goals for the Project (collectively, the “Funding Goals”):**

1.1.1. Ensure that the proposed Project is economically and fiscally feasible.

1.1.2. Fund the proposed Project’s capital costs and on-going operation and maintenance costs relating to the development and long-term operation of the Project Site (including the Authority’s administrative expenses, community facilities, open space maintenance and transportation) from revenues generated by the Project that would not exist but for the Project – including land sales, lease revenues, project-generated public financing revenues, and tax revenues created by the Project – in a manner that does not negatively impact the City’s General Fund revenues over the life of the Project, except as set forth herein.

1.1.3. Ensure that the provision of the community benefits and facilities described in the DDA and City DA are a priority of the Project.

1.1.4. Provide a mechanism for Authority and Navy participation in Net Cash Flow from the development of the Project in the event the Developer achieves a return in excess of agreed upon rates of return, and as consistent with the terms of the Conveyance Agreement.

1.1.5. Incorporate the legal restrictions on the allowable uses of Gross Revenues arising under (i) the Conveyance Agreement and (ii) State law applicable to the Tidelands Trust.

1.1.6. Provide mechanisms and Funding Sources that will allow Developer to maximize the Developer’s IRR.

1.1.7. Maximize Funding Sources available to finance Qualified Project Costs, by, among other things, to the extent reasonably feasible and consistent with this Financing Plan, using tax-exempt debt.

1.1.8. Minimize the costs to Developer (such as costs of credit enhancement) associated with the Funding Sources to the extent reasonably feasible and to use debt requiring credit enhancement only with Developer's written consent.

1.1.9. Provide financing of the Housing Costs in the manner set forth in Section 3.6.

1.1.10. Implement sound and prudent public fiscal policies that protect the City's General Fund, Authority's general funds, and the City's and Authority's respective financial standings and fiduciary obligations, while operating within the constraints of this Financing Plan and, as applicable, the IFD Act, the CFD Act, the CFD Goals, and Tax Laws.

**1.2. Purpose of Financing Plan. The purpose of this Financing Plan is to establish the contractual framework for mutual cooperation between Authority, City, and Developer in achieving the Funding Goals necessary to implement the Project. Accordingly, Authority and City shall take all actions reasonably necessary, and Developer shall cooperate reasonably with the efforts of:**

1.2.1. City to form requested CFDs, adopt RMAs, and levy Project Special Taxes within CFDs and incur CFD Bonds to pay as applicable Qualified Project Costs, Ongoing Park Maintenance, and, when authorized pursuant to Section 2.8, Additional Community Facilities.

1.2.2. City to form requested IFDs, approve IFPs for each IFD, and issue IFD Debt that is consistent with the Funding Goals to pay Qualified Project Costs.

1.2.3. City to allocate and apply Net Available Increment to pay Qualified Project Costs as provided in this Financing Plan, and to allocate Conditional City Increment to pay debt service on IFD Debt as provided in this Financing Plan.

1.2.4. City and Authority to finance Ongoing Park Maintenance in the manner described in this Financing Plan.

**1.3. Project Accounts.**

1.3.1. Developer shall, and shall require all Transferees to, establish and maintain one or more accounts (each, a "**Project Account**") with the San Francisco branches of financial institutions Approved by Authority to which all Gross Revenues shall be deposited. Financial institutions holding Project Accounts may be changed from time to time with Approval of Authority and Developer.

1.3.2. Developer shall, and shall require all Transferees: (A) not to commingle funds held in a Project Account with funds not related to the Project, including Affiliate accounts; and (B) to retain and make statements and all other records related to Project Accounts available for Authority's review and audit in accordance with Section 1.6.

**1.4. Security Interest in Project Accounts. Provided (A) Developer has completed all Developer Construction Obligations and (B) Authority has received an IRR**

Statement showing that Developer has achieved a cumulative IRR of more than 22.5% at the end of the last Quarter of the Reporting Period covered by such IRR Statement, Developer and Authority shall cooperate reasonably with one another to provide Authority and the Navy with security for Developer's obligation to make payments in accordance with Section 1.3. Security will be in the form of perfected security interests in the Project Accounts superior to any other security interests, evidenced by a UCC-1 financing statement and a control agreement with each financial institution holding a Project Account, or by other arrangements Approved by both Developer and Authority.

## **2. Funding Sources for Project Costs**

**2.1. Funding Sources.** Sources of public funding that will be used to pay or reimburse Developer for Qualified Project Costs include, but are not limited to: (A) Public Financing; (B) proceeds of Project Grants that Authority procures to the extent applied to Project Costs under Section 4.3; (C) Project Special Taxes and Remainder Taxes; (D) Net Available Increment; and (E) Net Interim Lease Revenues described in Section 6.1(a)(iv). The sources identified in clauses (A)-(E) are collectively referred to in this Financing Plan as "Funding Sources."

**2.2. Limited Public Obligation.** Developer acknowledges that in no event may the City's General Fund or any of Authority's general funds be obligated to finance the Qualified Project Costs other than as set forth in this Financing Plan without City's or Authority's express written consent, as applicable.

## **2.3. Developer Sources.**

**2.3.1. Developer Contributions for Project Costs.** Developer's sources for Project Costs include: (A) Developer equity; (B) Gross Revenues; (C) Developer construction and development financing; and (D) proceeds of Project Grants that the Developer procures.

**2.3.2. Developer Construction Obligations.** Developer acknowledges that the Developer Construction Obligations will not be affected if Project Costs exceed the actual Funding Sources.

## **3. Distribution of Net Cash Flow**

### **3.1. Implementation of Conveyance Agreement.**

**3.1.1.** Under the Conveyance Agreement, Authority and the Navy agreed that the Net Cash Flow from the Project will be shared by the Navy after certain thresholds are met. Authority shall also share in the Net Cash Flow after certain thresholds are met. This Section 1.3 implements (i) the provisions of the Conveyance Agreement and (ii) Authority and Developer's agreement with respect to the sharing of Net Cash Flow between them.

**3.1.2.** To the extent Authority has not paid the Initial Navy Consideration with Net Interim Lease Revenues pursuant to Section 6.1(a)(ii) or as otherwise provided in this Financing Plan, Developer will pay to Authority or Navy (on behalf of Authority) the Initial Navy Consideration in the manner described in Section 4.2 of the Conveyance Agreement and

any related late payment penalties caused by Developer's failure to make timely payments to Navy, on behalf of Authority, as such penalties are imposed pursuant to Section 4.3.4 of the Conveyance Agreement.

**3.2. Calculation of IRR.** Within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during the Term of the Conveyance Agreement with respect to the Navy, and until the Cash Flow Distribution Termination Date with respect to Authority, Developer shall submit a reasonably detailed statement to Authority and the Navy (the "IRR Statement") accompanied by an Accounting consistent with the Conveyance Agreement showing (i) for any IRR Statement provided during the Initial Consideration Term, the cumulative IRR achieved as of the end of each of the eight (8) immediately prior Quarters, and (ii) for any IRR Statement provided after expiration of the Initial Consideration Term, the cumulative IRR achieved as of the end of each of the six (6) prior Quarters (the eight or six Quarter Period, as applicable, the "Reporting Period"). The IRR Statement shall also calculate the average IRR over the Reporting Period, calculated by adding the cumulative IRR shown for each Quarter in the Reporting Period and dividing the total by the number of Quarters in the Reporting Period.

**3.3. Share of Net Cash Flow.**

3.3.1. Until the IRR Statement shows that Developer has achieved an average IRR of more than 18.00% over the Reporting Period, all Net Cash Flow shall be distributed to Developer.

3.3.2. If the IRR Statement shows that Developer has achieved an average IRR of more than 18.00% over the applicable Reporting Period, then Developer, on behalf of Authority, shall within forty-five (45) days after the end of the last Quarter of the applicable Reporting Period until the earlier of (A) such time as the aggregate amount of First Tier Payments equals Fifty Million Dollars (\$50,000,000) ("**First Tier Compensation**") and (B) the Termination Date, pay the Navy an amount that would reduce the cumulative IRR as of the end of the Reporting Period to 18.00% (each, a "**First Tier Payment**"). Developer shall pay to Navy on behalf of Authority any related late payment penalties caused by Developer's failure to make timely payments to Navy, on behalf of Authority, as such penalties are imposed pursuant to Section 4.3.4 of the Conveyance Agreement.

3.3.3. If an IRR Statement shows that Developer has achieved, after reducing Net Cash Flow by the amount of any First Tier Payments, an average IRR of more than 22.5% within the applicable Reporting Period, then Developer, on behalf of Authority, shall within forty-five (45) days after the end of the last Quarter of the applicable Reporting Period, for the periods specified below, pay (A) during the Term, to the Navy 35% of the total amount of Net Cash Flow that would reduce the cumulative Developer IRR to 22.5% as of the end of the Reporting Period (per the calculation methodology provided for in Exhibit DD to the Conveyance Agreement) (each, a "**Second Tier Payment**") and (B) to Authority, (i) during the Term, 10% of the total amount of Net Cash Flow and (ii) after the Term and continuing until the Cash Flow Distribution Termination Date, 45% of the total amount of Net Cash Flow, in each case that would reduce the cumulative IRR to 22.5% as of the end of the Reporting Period (an



**“Authority Second Tier Payment”**). Developer shall pay to Navy, on behalf of Authority, any related late payment penalties caused by Developer’s failure to make timely payments to Navy, on behalf of Authority, as such penalties are imposed pursuant to Section 4.3.4 of the Conveyance Agreement.

3.3.4. If an IRR Statement shows that Developer has achieved, after reducing Net Cash Flow by the amount of any First Tier Payments, Second Tier Payments, and Authority Second Tier Payments, an average IRR of more than 25.0% within the applicable Reporting Period, then Developer shall within forty-five (45) days after the end of the last Quarter of the applicable Reporting Period until the Cash Flow Distribution Termination Date, pay Authority an additional 5% of the total amount of Net Cash Flow that would reduce the cumulative Developer IRR to 25.0% as of the end of the Reporting Period (per the calculation methodology provided for in Exhibit DD to the Conveyance Agreement) (each, an **“Authority Third Tier Payment”**).

3.3.5. Exhibit DD to the Conveyance Agreement provides a demonstration of the IRR calculation and the sharing of Net Cash Flow.

**3.4. Accounting.** Developer shall maintain accurate books and records specific to the Project setting forth all components used for determining the Additional Consideration and the Authority Consideration, including, without limitation, each component of Net Cash Flow, and to determine the amount of Redesign Costs and credits against Initial Navy Consideration and Additional Consideration. Each IRR Statement submitted by Developer shall be accompanied by a complete Accounting. The Accounting shall be in conformance with GAAP where applicable, or with respect to the IRR Statement, in conformance with appropriate industry standards.

### **3.5. Reconciliation of Final Conveyance Agreement IRR.**

3.5.1. Developer shall, within one hundred and eighty (180) days after the Termination Date, submit a final Accounting to Authority and the Navy, showing Developer’s cumulative IRR for the entire term of the Project through the Termination Date (the **“Final Conveyance Agreement IRR”**) and all payments of Additional Consideration made to the Navy on behalf of Authority hereunder during the period specified in Section 1.3(c) and all payments of Authority Consideration made to Authority hereunder during the same period (the **“Final Conveyance Agreement IRR Statement”**). The Final Conveyance Agreement IRR Statement and Accounting shall be performed and certified by an independent CPA in accordance with appropriate industry standards.

3.5.2. If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 18% but the First Tier Payments to the Navy were less than the amount required by Section 1.3(c)(ii), Developer shall pay to the Navy on behalf of Authority the amount of Net Cash Flow necessary to reduce the Final Conveyance Agreement IRR to 18%, so long as the total of all First Tier Payments does not exceed the maximum amount required by Section 1.3(c)(ii).

3.5.3. If the Final Conveyance Agreement IRR Statement and

Accounting discloses that the Final Conveyance Agreement IRR exceeded 22.5%, but the Second Tier Payments totaled less than 35% of Net Cash Flow for the Project during the Term above a 22.5% Final Conveyance Agreement IRR, then Developer shall cause to be paid to Navy on behalf of Authority the amount of Net Cash Flow necessary to raise the total of Second Tier Payments to equal 35% of all Net Cash Flow during the Term above a 22.5% Final Conveyance Agreement IRR.

3.5.4. If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 22.5%, but Authority Second Tier Payments during the Term totaled less than 10% of Net Cash Flow for the Project during the Term above a 22.5% Final Conveyance Agreement IRR, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Second Tier Payments during the Term to equal 10% of all Net Cash Flow during the Term above a 22.5% Final Conveyance Agreement IRR.

3.5.5. If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 25.0%, but Authority Third Tier Payments during the Term totaled less than 5% of Net Cash Flow for the Project during the Term above a 25.0% Final Conveyance Agreement IRR, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Third Tier Payments during the Term to equal 5% of all Net Cash Flow during the Term above a 25.0% Final Conveyance Agreement IRR.

### **3.6. Reconciliation of Final IRR.**

3.6.1. Developer shall, within one hundred and eighty (180) days after the Cash Flow Distribution Termination Date, submit a final Accounting to Authority, showing Developer's cumulative IRR for the entire term of the Project through the Cash Flow Distribution Termination Date (the "**Final IRR**") and all payments of Authority Consideration made to Authority hereunder (the "**Final IRR Statement**"). The Final IRR Statement and Accounting shall be performed and certified by an independent CPA in accordance with appropriate industry standards.

3.6.2. If the Final IRR Statement and Accounting discloses that the Final IRR exceeded 22.5%, but during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date, Authority Second Tier Payments hereunder totaled less than 45% of Net Cash Flow for the Project above a 22.5% Final IRR during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Second Tier Payments to equal 45% of all Net Cash Flow above a 22.5% Final IRR for the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date.

3.6.3. If the Final IRR Statement and Accounting discloses that the Final IRR exceeded 25.0%, but Authority Third Tier Payments hereunder totaled less than 5% of Net Cash Flow for the Project above a 25.0% Final IRR during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date, then Developer shall

cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Third Tier Payments to equal 5% of all Net Cash Flow above a 25.0% Final IRR during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date.

**3.7. Reconciliation of Redesign Costs.** Within one hundred eighty (180) days after completion of all planning, entitlement, design and rebuilding work required under the Redesign Plan, as evidenced by City acceptance of all public improvements and final building inspection sign-off for all improvements as identified in the Work Program, Developer shall provide Authority and the Navy with a statement that includes an Accounting of all Redesign Costs actually incurred by Developer and Authority and a statement of the amount to be credited against Initial Consideration in accordance with Section 4.3.6.2 of the Conveyance Agreement. The Accounting shall be performed and certified by an independent CPA in accordance with GAAP.

**3.8. Submission of IRR Statements.** Developer shall continue to submit the IRR Statement and Accounting (A) to the Navy and Authority until the Termination Date, and (B) to Authority only following the Termination Date until the Cash Flow Distribution Termination Date.

**3.9. Compliance with Conveyance Agreement.** The Developer shall provide Authority with all information and shall cooperate with Authority to the extent necessary for Authority to comply with its reporting and audit obligations under the Conveyance Agreement.

**3.10. Audit.** Authority shall be entitled from time to time to audit Developer's books, records, and accounts pertaining to the Net Cash Flow and all components thereof, the payment of Additional Consideration, the calculation and payment relating to the Authority Second Tier Payments and Authority Third Tier Payments, the calculation, payments and credits relating to the Redesign Costs, and shall be entitled to allow the Navy to undertake an audit to the extent described in Section 4.3.7 of the Conveyance Agreement. Such audit shall be conducted during normal business hours upon ten (10) business days notice at the principal place of business of Developer and other places where records are kept. Authority shall provide Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Additional Consideration, Authority Second Tier Payments and Authority Third Tier Payments, the Developer shall immediately pay any such deficiency with interest at the Default Interest Rate. In addition, if it shall be determined as a result of such audit that an Accounting has understated the Net Cash Flow for the applicable period by more than five percent (5%), Developer shall be required to pay, in addition to interest as aforesaid, all of Authority's costs and expenses and all of the Navy's costs and expenses connected with the audit or review of Developer's accounts and records for the Project. All such payments shall be paid within thirty (30) days of receipt of written notice to Authority of such underpayment and such audit costs shall not be allowed as a Development Cost. The issue of whether Net Cash Flow is understated or overstated by five percent (5%) or more may be arbitrated according to the procedures in section 15 of the DDA, but the arbitration must be conducted by

arbitrators who have at least ten (10) years' experience in arbitrating disputes involving complex financial accounting.

**3.11. Excess Land Appreciation Structure Profits.** To the extent it is commercially reasonable to do so and consistent with market practices for each product type at the time, all sales agreements, leases or subleases, as applicable, between a Vertical Developer and Developer will require Vertical Developer to pay Developer a percentage of any net profits above a mutually agreed-upon forecasted rate arising from the Excess Land Appreciation Structure. The net profits from the Excess Land Appreciation Structure actually received by Developer shall constitute Gross Revenues.

**4. Reimbursements of Additional Consideration**

**4.1. Additional Consideration in Event of Termination.** In the event that Authority terminates all or any portion of the DDA before the issuance of the last Certificate of Completion for the Project for any reason, Authority shall do the following:

4.1.1. require that any other developer that agrees to develop the property in the Project Site (the "**Other Developer**") make payments of Net Cash Flow to Authority in the same manner as set forth in Section 1.3;

4.1.2. in calculating the amount of the First Tier Payments and Second Tier Payments to be paid to the Navy, Authority shall calculate such amounts based on the cumulative IRR for the Project Site as a whole, and not on the cumulative IRR of any particular developer's project;

4.1.3. to ensure that Authority has sufficient funds, however, to pay the Navy its First Tier Compensation, the First Tier Payments shall be calculated separately for Developer and each Other Developer, and any First Tier Payments payable under the separate calculations shall be paid to Authority by Developer and each Other Developer, as applicable, and held as a deposit to be used to pay the Navy its First Tier Compensation (calculated based on the Project Site as a whole) as and when due, with any excess remaining on deposit with the Authority pending the payment of the full amount of the First Tier Compensation to the Navy;

4.1.4. if, following the payment of the First Tier Compensation to the Navy, the amount Authority collected from Developer and each Other Developer is greater than the amount of the First Tier Compensation actually paid to the Navy, then Developer and each Other Developer shall be reimbursed such excess amounts pro rata (based upon the cumulative amount Developer and each Other Developer paid in First Tier Payments);

4.1.5. to ensure that Authority has sufficient funds to pay the Navy its Second Tier Participation, the Second Tier Payments shall be calculated separately for Developer and each Other Developer, and any Second Tier Payments payable under the separate calculations shall be paid to Authority by Developer and each Other Developer, as applicable, and held as a deposit, to be used to pay the Navy its Second Tier Participation (calculated based on the Project Site as a whole) as and when due, with any excess remaining on deposit with the Authority pending the calculation of the Final Conveyance Agreement IRR for the Project Site as a whole; and

4.1.6. if, following the determination of the Final Conveyance Agreement IRR for the Project Site as a whole, the amount Authority has on deposit from Developer and each Other Developer from Second Tier Payments is greater than the amount of Second Tier Participation actually paid to the Navy, then Developer and each Other Developer shall be reimbursed such excess amounts pro rata (based upon the cumulative amount Developer and each Other Developer paid in Second Tier Payments over the Term).

## **5. Consultants**

**5.1. Authority Consultants.** City and Authority, following consultation with Developer, will select any consultants necessary to implement their respective portions of this Financing Plan, including the formation of any IFD and CFD and the issuance of any Public Financing. To the extent that similar consultants are retained customarily by local agencies in California that engage in public financing similar or of similar complexity to the Public Financing, the consultants may include special tax consultants, tax increment fiscal consultants, appraisers, financial advisors, bond underwriters, absorption consultants, bond counsel, bond trustees, escrow agents, and escrow verification agents. City's and Authority's reasonable out-of-pocket costs that are not contingent upon the issuance of a Public Financing will be advanced by Developer pursuant to a deposit agreement to be entered into among City, Authority, and Developer, and Developer shall be entitled to reimbursement of such advances from the proceeds of the Public Financing if authorized by the applicable CFD Act, the IFD Act, Tax Laws, and other governing law. To the extent not advanced by Developer, City's and Authority's reasonable out-of-pocket costs that are customarily paid by local agencies in the State for Public Financing consultants will be reimbursed from the proceeds of a Public Financing to the extent permitted under the CFD Act, the IFD Act, applicable Tax Laws, and other governing law. To the extent Authority is not so reimbursed, such unreimbursed consultant costs will be Authority Costs under the DDA.

**5.2. Developer Consultants.** Developer may engage its own consultants to advise it on matters related to this Financing Plan or any Public Financing, and its reasonable out-of-pocket costs will be reimbursed from the proceeds of a Public Financing to the extent permitted under the CFD Act, the IFD Act, applicable Tax Laws, and other governing law. To the extent Developer is not reimbursed from the proceeds of a Public Financing, such costs will be Soft Costs.

## **6. Recordkeeping**

### **6.1. Annual Reports.**

6.1.1. Commencing as of the date that Developer obtains the Major Phase Approval for the Initial Major Phase and ending on the later of (A) the date on which Developer has received the final Certificate of Completion for all of the Infrastructure and (B) the earlier of (i) the date on which Developer has been reimbursed for all Qualified Project Costs and (ii) the date on which there are no further Gross Revenues available to reimburse Developer for Qualified Project Costs, Developer shall prepare and deliver to Authority an annual financial report on the Project no later than four (4) months following the end of each Developer Fiscal

Year for which a report is due (each, an “**Annual Report**”). If Developer obtains a Major Phase Approval less than six (6) months before the end of a Developer Fiscal Year, Developer may include reporting for that Major Phase in the Annual Report for the next Developer Fiscal Year. If any Annual Report shows any material discrepancy, then Developer must correct the discrepancy in its Records, and Developer and the Authority agree to meet and confer on the best method for correcting any overpayment or underpayment by the end of the next quarter in the Developer Fiscal Year.

6.1.2. Annual Reports must include the following information, reported separately for each Major Phase for which a Major Phase Approval has been obtained and in the aggregate for the Project as a whole: (A) updated estimates of and actual Project Costs, Qualified Project Costs and Gross Revenues; (B) if applicable, variances from the prior Annual Report; (C) a statement reflecting the application of any Net Cash Flow that Developer has received during the prior Developer Fiscal Year; (D) a statement of Qualified Project Costs reimbursed from Funding Sources; (E) a statement of Qualified Project Costs previously incurred but not yet reimbursed from the Funding Sources; (F) new development expected to occur or that is occurring, the assessed value of which is expected to be included on the secured real property tax roll for the next Fiscal Year; and (G) any sales of Lots under article 17 of the DDA that are expected to occur and the assessed value of which is expected to be included on the secured real property tax roll for the next Fiscal Year.

6.1.3. Developer’s Annual Report must cover the entire Project, even if Developer has Transferred part or all of its interest in a Major Phase or Sub-Phase to a Transferee.

6.1.4. Developer’s obligation to provide Annual Reports will terminate as to any portion of the Project as to which the DDA is terminated after Developer has provided to Authority the Annual Report covering the Developer Fiscal Year during which the termination took effect.

**6.2. Developer Books and Records.** Developer shall maintain books and records of all: (i) Gross Revenues; (ii) application of Funding Sources to Qualified Project Costs; and (iii) Project Costs, organized by Major Phases, in accordance with generally accepted accounting principles consistently applied, or in another auditable form Approved by Authority (the “Records”). Developer shall maintain Records for each Major Phase in the City or at another location Approved by Authority for at least four (4) years after the applicable Major Phase closing date. After reasonable notice, Developer shall make the Records available to Authority at reasonable times.

**6.3. Authority Records.** Authority shall provide copies of its audited financial statements relating to the Project Site to Developer as soon as practicable following their public filing or release.

**6.4. City Records.** City shall provide copies of its audited financial statements relating to the Project Site to Developer as soon as practicable following its public filing or release. If prepared, City shall provide copies of any annual Statement of

Indebtedness relating to the Project Site to Developer as soon as practicable following its public filing or release.

**6.5. Accounting.** Developer, City, and Authority will separately track the use of all Funding Sources and any revenues generated from the Project as a whole and from the Tidelands Trust lands in order to ensure that they are used only for purposes consistent with this Financing Plan and applicable law.

**7. Unreimbursed Authority Costs.** If: (a) Developer commits a Material Breach under the DDA; (b) Authority obtains a final judgment for the payment of any related amount under article 15 of the DDA; and (c) Authority makes demand for payment of the amount of the final judgment on any Adequate Security, but does not receive payment within thirty (30) days after Authority's written demand, then Authority may, to the extent permitted under applicable law, recover from any available proceeds of a Public Financing the amount of the final judgment, plus Authority's costs of collection and interest at the rate of ten percent (10%) per annum of the amount of the final judgment, calculated from the date the payment was due until paid in full, compounded annually. This provision will not apply to Authority Costs to be paid from the proceeds of any Public Financing as provided in the applicable Indenture or other governing documents, or from Project Grants according to their terms. This provision will not apply to Authority Costs paid pursuant to Sections 3.9 and 6.1 of this Financing Plan.

### **III. COMMUNITY FACILITIES DISTRICT FINANCING**

#### **1. Formation of CFDs**

**1.1. Formation.** City shall establish all CFDs from time to time as Developer acquires Sub-Phases under the DDA. All CFDs will be formed and administered to achieve the Funding Goals and in accordance with the CFD Act and the CFD Goals. Developer acknowledges that the CFD Goals will prevail over any inconsistent terms in this Financing Plan, unless the Board of Supervisors in its sole discretion Approves a waiver of the CFD Goals. Any CFD may include separate Improvement Areas and tax zones. In addition, Developer and City may agree to identify property for future annexation and additional public capital facilities for the Project to be financed under the CFD Act in the CFD formation documents.

**1.2. Taxable Parcels.** Developer and City intend that Project Special Taxes will be levied against all Taxable Parcels for the purposes described in this Financing Plan and agree that all Exempt Parcels will be exempt from Project Special Taxes.

#### **1.3. Petition.**

**1.3.1.** At any time, and from time to time, after Authority acquires all or part of the Project Site from the Navy, Developer may petition City under the CFD Act from time to time to establish one or more CFDs within the Sub-Phase. In its petition, Developer may include proposed specifications for the CFD, including Assigned Project Special Tax Rates, Project Special Tax rates, CFD boundaries and any proposed Improvement Areas and tax zones

within the CFD (which may include one or more Sub-Phases or Major Phases), the identity of any property to be annexed into the CFD at a later date, the total tax burden that will result from the imposition of the Project Special Taxes (subject to the 2% Limitation for Taxable Residential Units), and other provisions. Developer's proposed specifications will be based on Developer's development plans, market analysis, and required preferences, but in all cases will be subject to this Financing Plan, the Funding Goals, and the CFD Goals.

1.3.2. Following City's receipt of a petition, Developer and City will meet with City's Public Financing consultants to determine reasonable and appropriate terms of the proposed CFD that are consistent with Developer's petition and the Funding Goals.

**1.4. Authorized Uses.** Each CFD shall be authorized to finance all of the Qualified Project Costs, Additional Community Facilities, and Ongoing Park Maintenance, irrespective of the geographic location of the improvements financed or maintained.

**1.5. Joint Community Facilities Agreements.** Under the CFD Act, City may be required to enter into a joint community facilities agreement with another Governmental Entity that will own or operate any of the Infrastructure. Authority and the City have agreed that the Interagency Cooperation Agreement, which will be executed in connection with the DDA, is a joint community facilities agreement under the CFD Act for all of the Infrastructure to be financed by CFDs and owned or operated by the Authority. City and Developer agree that they will take all steps necessary to procure the authorization and execution of any other required joint community facilities agreement with a Governmental Entity other than Authority before the issuance of any CFD Bonds that will finance Infrastructure that will be owned or operated by such Governmental Entity other than Authority.

**1.6. Notice of Special Tax Lien.** Project Special Taxes will be secured by recordation in the Official Records of continuing liens against all Taxable Parcels in the applicable CFD.

## **2. Scope of CFD-Financed Costs**

**3.1. Authorized Costs.** A CFD may finance only Qualified Project Costs, Additional Community Facilities, and Ongoing Park Maintenance that: (a) are financeable under the CFD Act; and (b) qualify under Tax Laws, if CFD Bonds are issued and if CFD Bonds are issued as tax-exempt bonds.

### Parameters of CFD Formation

**3.2. Cooperation.** Developer and City agree to cooperate reasonably in developing an RMA for each CFD that is consistent with this Financing Plan and, to the extent consistent with this Financing Plan, Developer's petition. Developer and City will each use good-faith reasonable efforts at all times to furnish timely to the other, or to obtain and then furnish to the other, any information necessary to develop an RMA, such as legal boundaries of the property to be included and Developer's plans for the types,



sizes, numbers, and timing for construction of Buildings, within the applicable CFD. Each CFD will be subject to its own RMA and authorized bonded indebtedness limit.

**3.3. RMA Consultants and Approval.** The RMA for any CFD will be: (i) developed by City's special tax consultant, in consultation with Developer and City's staff and other consultants; (ii) consistent with Developer's petition to the extent consistent with this Financing Plan; and (iii) subject to Approval of the Board of Supervisors in the resolution of formation. Project Special Taxes on any Taxable Parcel must not exceed any applicable maximum rate specified in the CFD Goals and this Financing Plan, unless otherwise Approved by the Board of Supervisors and Developer.

**3.4. Priority Administrative Costs.** In the formation process for each CFD, City and Developer will agree on the amount of annual CFD administrative costs that will have first priority for payment by Project Special Tax based on: (i) actual administration costs of other community facilities districts of the City; (ii) the CFD's complexity and size; and (iii) cumulative administration costs for all anticipated CFDs for the Project. The contracts for consultants administering the CFDs and the calculation of any City staff time deemed administration expenses will be determined in accordance with article 19 of the DDA.

**3.5. Assigned Project Special Tax Rates for Developed Property.** Each RMA will specify Project Special Tax rates for Developed Property within the CFD (each an "Assigned Project Special Tax Rate"). The Assigned Project Special Tax Rates for Developed Property may vary based on sizes, densities, types of Buildings to be constructed, and other relevant factors when the CFD is formed. Each RMA will establish Assigned Project Special Tax Rates assuming that any First Tranche CFD Bonds issued will have a debt service coverage-ratio of one hundred ten percent (110%), unless City and Developer Approve a higher ratio to market the First Tranche CFD Bonds effectively.

**3.6. Total Tax Obligation.** The Assigned Project Special Tax Rates will be set so that the Total Tax Obligation on any Taxable Residential Unit within a CFD will not exceed two percent (2%) of the projected sales price of that Taxable Residential Unit calculated at the time of the resolution of intention to form the CFD (the "2% Limitation"). If an RMA is modified to increase the Project Special Tax rates, the Assigned Project Special Tax Rates will be modified so that the Total Tax Obligation on any Taxable Residential Unit within a CFD does not exceed the 2% Limitation when the proposed modification goes into effect. The 2% Limitation will not apply to non-residential property in a CFD.

**3.7. Classification of Assessor's Parcels.** Each RMA will provide for the taxation of Developed Property and Undeveloped Property. Each RMA will identify all Exempt Parcels, which will be exempt from payment of Project Special Taxes.

**3.8. Backup and Maximum Project Special Tax Rates.** Each RMA will provide for: (i) backup Project Special Tax rates that will be applied to each Taxable Parcel in a tract map, Improvement Area, tax zone, condominium plan, or other

**identifiable area on Developed Property (each a “Backup Project Special Tax Rate”); and (ii) maximum Project Special Tax rates on Developed Property and Undeveloped Property (each a “Maximum Project Special Tax Rate”). The Maximum Project Special Tax Rate for a Taxable Parcel of Developed Property will be the greater of the applicable Assigned Project Special Tax Rate or the applicable Backup Project Special Tax Rate. Developer and City will structure the Backup Project Special Tax Rates and Maximum Project Special Tax Rates for a CFD to be consistent with the funding goals established for the CFD, considering Developer’s development plans and preferences for structuring the Project Special Tax rates within the applicable CFD, and this Financing Plan.**

**3.9. Escalation of Special Tax Rates.** At Developer’s request, each RMA will provide for annual increases in the Project Special Tax rates so long as the total projected taxes levied for a CFD do not exceed any maximum specified in the CFD Act.

**3.10. Priority for Annual Levy of Special Taxes.** Each RMA will provide for the levy of Project Special Taxes to fund debt service (not including capitalized interest), administrative costs, and Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities to be financed by the CFD each year of its term (collectively, the “Special Tax Requirement”) according to the priorities set in the Indenture, until the Special Tax Requirement is fully satisfied. Each RMA must reflect the priorities set forth below:

3.10.1. First, Project Special Taxes will be levied on each Taxable Parcel of Developed Property at the applicable Assigned Project Special Tax Rate, regardless of whether City has issued CFD Bonds or the debt service requirements for any existing CFD Bonds, before applying any capitalized interest.

3.10.2. Second, to the extent the funds to be collected under clause (i) will not be sufficient to satisfy the Special Tax Requirement in full after application of any capitalized interest, Project Special Taxes will be levied proportionately on each Taxable Parcel of Subsequent Owner Property, up to one hundred percent (100%) of the applicable Maximum Project Special Tax Rate.

3.10.3. Third, to the extent the funds to be collected under clauses (i) and (ii) will not be sufficient to satisfy the Special Tax Requirement in full after application of any capitalized interest, Project Special Taxes will be levied proportionately on each Taxable Parcel of Undeveloped Property that is not Subsequent Owner Property, up to one hundred percent (100%) of the applicable Maximum Project Special Tax Rate.

3.10.4. Fourth, to the extent the funds to be collected under clauses (i), (ii), and (iii) will not be sufficient to satisfy the Special Tax Requirement in full after application of any capitalized interest, additional Project Special Taxes will be levied proportionately on each Taxable Parcel of Developed Property, so long as the total levy on Developed Property under clauses (i) and (iv) does not exceed the applicable Maximum Project Special Tax Rate.

**3.11. Use of Remainder Taxes.**

3.11.1. Developer and City contemplate that, within each CFD, Qualified

Project Costs and Ongoing Park Maintenance will be paid from Remainder Taxes both before and after the issuance of CFD Bonds for such CFD and after the final maturity of any CFD Bonds for such CFD. Accordingly, each RMA will provide that Remainder Taxes may be used to finance Ongoing Park Maintenance and Qualified Project Costs. For each CFD, annually, on the day following each Principal Payment Date for such CFD, all Remainder Taxes for such CFD will be deposited in the applicable Remainder Taxes Project Account.

3.11.2. With respect to all CFDs:

- (A) Before the Maintenance Commencement Date, for each CFD, annually, on or before October 1 of each year, Remainder Taxes for each CFD shall be deposited in the Remainder Taxes Project Account for such CFD and applied, from time to time at Developer's request, to finance Qualified Project Costs.
- (B) After the Maintenance Commencement Date, for all CFDs, annually, on or before October 1 of each year, Remainder Taxes for all CFDs shall be transferred to Authority and held in the Remainder Taxes Holding Account and applied as set forth in Section 2.7.

3.11.3. Any amounts transferred to City pursuant to Section 2.7(c)(i)(B), shall be deposited to the Remainder Taxes Project Accounts pro rata (based on the ratio of Maximum Project Special Tax Rates) and shall be applied as follows:

- (A) Prior to the CFD Conversion Date, amounts on deposit in the Remainder Taxes Project Accounts shall be applied, from time to time at Developer's request, to finance Qualified Project Costs.
- (B) After the CFD Conversion Date, amounts on deposit in the Remainder Taxes Project Accounts shall be applied to finance Additional Community Facilities or for any other use authorized by the CFD Act.

**3.12. No Pledge for Debt Service.** Remainder Taxes deposited in the Remainder Taxes Project Accounts or transferred to Authority for deposit in the Remainder Taxes Holding Account or the Ongoing Maintenance Account, will not be deemed or construed to be pledged for payment of debt service on any CFD Bonds, and neither Developer nor any other Person will have the right to demand or require that Authority, City, or Fiscal Agent, as applicable, use funds in the Remainder Taxes Project Accounts, the Remainder Taxes Holding Account, or the Ongoing Maintenance Account to pay debt service.

**3.13. Prepayment.** The RMA will include provisions allowing a property owner within the CFD that is not in default of its obligation to pay Project Special Taxes to prepay Project Special Taxes in full or in part based on a formula that will require

payment of the property owner's anticipated total Project Special Tax obligation; provided, however, that prepayment shall not be allowed if it impacts the financing of Ongoing Park Maintenance. Prepaid Project Special Taxes will be placed in a segregated account in accordance with the applicable Indenture. The RMA and the Indenture will specify the use of prepaid Project Special Taxes.

3.14. Amendment to RMA. Each RMA must be consistent with this Financing Plan. Nothing in this Financing Plan will prevent an amendment of any RMA for a CFD under its terms or under Change Proceedings.

3.15. Reducing Project Special Tax Rates Before Issuance of First Tranche CFD Bonds. An RMA may contain a provision that allows Developer to request that the Total Tax Obligation be recalculated and Project Special Tax rates be reduced before any First Tranche CFD Bonds are issued so that the Total Tax Obligation does not exceed two percent (2%) of the actual or projected sales prices of Taxable Residential Units at the time of recalculation. Subject to the CFD Act, but only if expressly permitted and defined in the RMA, after consultation with Developer regarding its request, City shall reduce Project Special Tax rates in a CFD administratively without the vote of the qualified CFD electors before First Tranche CFD Bonds for such CFD are issued notwithstanding Sections 2.3(j), 2.7, or 2.6(a). If expressly permitted and defined in the RMA, a reduction in one taxing category does not have to be proportionate to the reduction in any other taxing category (i.e., disproportionate reductions may be expressly allowed in the RMA). If the Maximum Project Special Tax Rate is permanently reduced, City will record timely an appropriate instrument in the Official Records.

#### 4. Issuance of CFD Bonds

4.1. Issuance. Subject to Approval of the Board of Supervisors and Sections 4.4 and 4.5, City, on behalf of the CFD, intends to issue CFD Bonds for purposes of this Financing Plan. Developer may submit written requests that City issue First Tranche CFD Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer's request, Developer and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with the Funding Goals.

4.2. Payment Dates. So that Remainder Taxes may be calculated on the same date for all CFDs and CFD Bonds, each issue of CFD Bonds shall have interest payment dates of March 1 and September 1, with principal due on September 1.

4.3. Value-to-Lien Ratio. The appraised or assessed value-to-lien ratio required for each First Tranche CFD Bond issue will be three to one (3:1), unless otherwise required by the CFD Act or the mutual agreement of Developer and City.

4.4. Coverage Ratio. To preserve the ability to finance Ongoing Park Maintenance, an issue of First Tranche CFD Bonds will not have a debt service coverage-ratio of less than one hundred ten percent (110%), unless otherwise agreed to by City.

**4.5. Term.** Subject to Section 2.8, First Tranche CFD Bonds will have a term of not less than thirty (30) years and not more than forty (40) years unless Developer and City agree otherwise.

**4.6. Second Tranche CFD Bonds.** After the CFD Conversion Date for a CFD, City has the right in its sole discretion to issue Second Tranche CFD Bonds in such CFD as set forth in this Financing Plan.

**5. Use of Proceeds**

**5.1. First Tranche CFD Bond Proceeds.** Subject to Tax Laws, the CFD Act, and the CFD Goals, First Tranche CFD Bond proceeds will be used in the following order of priority: (i) to fund required reserves and pay costs of issuance; (ii) to fund capitalized interest amounts, if any; (iii) to pay Qualified Pre-Development Costs (which do not include any return on such Pre-Development Costs); and (iv) to pay outstanding Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities. The remainder will be deposited into the CFD Bonds Project Account as designated in the Indenture and must be used only to pay for Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities.

**5.2. Qualified Project Costs; Additional Community Facilities.** By this Financing Plan, City pledges the proceeds of First Tranche CFD Bonds on deposit in CFD Bonds Project Accounts or as otherwise provided in the applicable Indenture and, subject to Sections 2.3(j) and 2.7, all Remainder Taxes on deposit in each Remainder Taxes Project Account to finance Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities. In furtherance of this pledge, City shall levy Project Special Taxes in each Fiscal Year in strict accordance with the applicable RMA and this Financing Plan.

**6. Miscellaneous CFD Provisions**

**6.1. Change Proceedings.** Subject to the limitations in this Financing Plan, including the Funding Goals, and so long as the proposed changes do not adversely affect the issuance or amount of Second Tranche CFD Bonds or the application, timing of receipt, or overall amount of Remainder Taxes to pay Ongoing Park Maintenance and Additional Community Facilities pursuant to Section 2.8, City will not reject unreasonably Developer's request to conduct Change Proceedings under the CFD Act to: (i) make any changes to an RMA, including amending the rates and method of apportionment of Project Special Taxes; (ii) increase or decrease the authorized bonded indebtedness limit within a CFD; (iii) annex property into a CFD; (iv) add additional public capital facilities for the Project; or (v) take other actions reasonably requested by Developer. For purposes of this Section 2.6(a), Developer acknowledges that any reduction in the Project Special Tax rates set forth in an RMA through Change Proceedings shall require the consent of City, which may be granted in its discretion. Except as set forth in the previous sentence, for purposes of this Section 2.6(a), City agrees that none of the following changes will be deemed to adversely affect the ability of City to issue Second Tranche CFD Bonds or apply the Remainder Taxes to Ongoing Park Maintenance or

Additional Community Facilities pursuant to Section 2.8: (x) increasing the Project Special Tax rates in an RMA for any land use classification; (y) increasing the authorized bonded indebtedness limit; and (z) authorizing the financing of additional public capital facilities for the Project.

**6.2. Maintaining Levy of CFD Financing.** Under section 3 of article XIIC of the California Constitution, voters may, under certain circumstances, vote to reduce or repeal the levy of special taxes in a community facilities district. However, the California Constitution does not allow the reduction or repeal to result in an impairment of contract. The purpose of this Section 2.6(b) is to give notice that: (i) both the DDA and the City DA (including, in both cases, this Financing Plan) is a contract between Developer and Authority (in the case of the DDA) and Developer and City (in case of the City DA); (ii) the financing of the Qualified Project Costs and the Additional Community Facilities through the application of CFD Bond proceeds (which are secured by Project Special Taxes) and Remainder Taxes (as described in Section 2.3(j) and Section 2.7) is an essential part of the consideration for the contracts; (iii) the financing of Ongoing Park Maintenance through the application of Remainder Taxes is an essential part of the consideration for the contracts; and (iv) any reduction in City's ability to levy and collect Project Special Taxes would materially impair those contracts. To further preserve the contracts discussed above, City agrees that: (y) until all First Tranche CFD Bonds have been repaid in full or defeased before maturity for any reason other than a refunding, it will not initiate or conduct proceedings under the CFD Act to reduce the Project Special Tax rates without Developer's written consent or if legally compelled to do so (e.g., by a final order of a court of competent jurisdiction); and (z) if the voters adopt an initiative ordinance under section 3 of article XIIC of the California Constitution that purports to reduce, repeal, or otherwise alter the Project Special Tax rates before all First Tranche CFD Bonds have been repaid in full or defeased before maturity for any reason other than a refunding, City will meet and confer with Developer to consider commencing and pursuing reasonable legal action to preserve City's ability to comply with this Financing Plan.

**6.3. Covenant to Foreclose.** City will covenant with CFD bondholders to foreclose the lien of delinquent Project Special Taxes consistent with the general practice for community facilities districts in California and otherwise as determined by City in consultation with its underwriter or financial advisor for the CFD indebtedness and other consultants, subject to applicable laws.

**6.4. Reserve Fund Earnings.** The Indenture for each issue of First Tranche CFD Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred to: (i) the CFD Bonds Project Account for allowed uses until it is closed in accordance with the Indenture; then (ii) the debt service fund held by the Fiscal Agent under the Indenture.

**6.5. Authorization of Reimbursements.** City will take all actions necessary to satisfy section 53314.9 of the Government Code or any similar statute subsequently enacted to use First Tranche CFD Bond proceeds and Remainder Taxes to reimburse

Developer for: (i) CFD formation and First Tranche CFD Bond issuance deposits; and (ii) advance funding of Qualified Project Costs.

**6.6. Material Changes to the CFD Act.** If material changes to the CFD Act after the Reference Date make CFD Bonds or Remainder Taxes unavailable or severely impair their use as a source for financing the Qualified Project Costs or Additional Community Facilities, City and Developer will negotiate in good faith as to a substitute public financing program equivalent in nature and function to CFDs.

**6.7. CFD Goals.** Until the CFD Conversion Date for a CFD, the City shall not change or amend the CFD Goals as they apply to such CFD if such changes or amendments adversely impact the Project or are inconsistent with this Financing Plan unless such changes or amendments are required under the CFD Act or other controlling State or federal law or, with respect to such CFD, as otherwise Approved by Developer in its sole discretion.

**6.8. Private Placement of CFD Bonds.** Subject to Board of Supervisors Approval and Section 4.4(b), upon Developer's written request, City shall issue CFD Bonds in a private placement to a small number of investors (which may include Developer and its Affiliates). In connection with any such private placement, City and the investors may agree upon terms regarding the security of such CFD Bonds other than as required by this Agreement, including, but not limited to, the 3:1 value-to-lien ratio of Section 2.4(c); provided, however, any CFD Bonds must have a debt service coverage-ratio of one hundred ten percent (110%) unless City consents to a lower amount. Subject to Board of Supervisors Approval and the CFD Goals, if the CFD Bonds are sold to Developer or its Affiliates, and if the CFD Bonds are not subject to transfer, credit enhancement may not be required.

**6.9. Levy for Ongoing Park Maintenance.** For each CFD, prior to its CFD Conversion Date, Ongoing Park Maintenance shall be payable from Remainder Taxes and other sources identified in Section 2.7. For each CFD, after its CFD Conversion Date, Ongoing Park Maintenance may be payable from Project Special Taxes or Remainder Taxes. In both cases, Ongoing Park Maintenance may be funded irrespective of the issuance of CFD Bonds (First Tranche or Second Tranche) and irrespective of whether there are unreimbursed Qualified Project Costs or Additional Community Facilities. Accordingly, each RMA shall provide for the financing of Ongoing Park Maintenance for the duration of the CFD.

## **7. Ongoing Park Maintenance**

**Maintenance Budget.** Not later than April 1 of each year following the Maintenance Commencement Date, Authority shall prepare a preliminary budget of the Estimated Maintenance Costs for the immediately succeeding Maintenance Period. The Estimated Maintenance Costs shall be determined by (i) estimating the costs of the Ongoing Park Maintenance to be incurred during the immediately succeeding Maintenance Period and (ii) subtracting (A) any funds, revenues, and Project Grants that are received for maintenance purposes, (B) any funds on deposit in the Remainder Taxes

**Holding Account, and (C) any funds on deposit in the Ongoing Maintenance Account that are not committed to the payment of Ongoing Park Maintenance during the current Maintenance Period.**

**Delivery of Maintenance Budget.** Upon completion by Authority, the preliminary budget will promptly be delivered to Developer for review. Developer shall have fifteen (15) days to review and comment on the preliminary budget. Authority will duly evaluate and implement the reasonable suggestions made by Developer, and Authority shall distribute a final version of the budget to Developer (as finalized, the “Maintenance Budget”). The Maintenance Budget shall also be delivered to the City upon completion. The Maintenance Budget must be completed by no later than June 1 in any given year.

**Calculation of Developer Maintenance Payment.** Authority shall annually calculate the Developer Maintenance Payment at the same time that the Maintenance Budget is completed.

If, on the date of calculation, the amount on deposit in the Ongoing Maintenance Account that is not committed to the payment of Ongoing Park Maintenance during the current Maintenance Period plus the amount on deposit in the Remainder Taxes Holding Account equals or exceeds the Estimated Maintenance Costs set forth in the applicable Maintenance Budget, then Authority shall (A) transfer funds from the Remainder Taxes Holding Account to the Ongoing Maintenance Account in such amount as is necessary so that the amounts on deposit in the Ongoing Maintenance Account equals the Estimated Maintenance Costs, (B) transfer the remaining funds on deposit in the Remainder Taxes Holding Account to City for deposit in the Remainder Taxes Project Accounts as set forth in Section 2.3(j)(iii), and (C) notify Developer that the Developer Maintenance Payment for such Maintenance Period shall be \$0.

If, on the date of calculation, the amount of the Estimated Maintenance Costs set forth in the applicable Maintenance Budget exceeds the amount on deposit in the Ongoing Maintenance Account and the Remainder Taxes Holding Account, then Authority (A) shall transfer the entire balance of the Remainder Taxes Holding Account to the Ongoing Maintenance Account and (B) may request in writing that Developer make a Developer Maintenance Payment in an amount equal to the lesser of:

- (1) the difference between the Estimated Maintenance Costs set forth in such Maintenance Budget and amounts on deposit in the Ongoing Maintenance Account and Remainder Taxes Holding Account on such date of calculation; and
- (2) the Maximum Annual Developer Contribution.

**Maximum Annual Developer Contribution.** On any date of calculation, the Developer Maintenance Payment shall not exceed the lesser of (“Maximum Annual Developer Contribution”):

- 7.1.1. (A) for the first five years in which Maintenance Budgets are



prepared following the Maintenance Commencement Date, the greater of (1) \$1,500,000 or (2) \$1,500,000 plus the portion of the Maximum Annual Developer Contribution for each previous year, if any, that was not paid to Authority; and (B) for each year after the first five years in which Maintenance Budgets are prepared following the Maintenance Commencement Date, the greater of (1) \$3,000,000, or (2) \$3,000,000 plus the portion of the Maximum Annual Developer Contribution for each previous year, if any, that was not paid to Authority; or

7.1.2. the Maintenance Account Balance.

**Maintenance Account Balance.** On the Reference Date, Authority shall be credited with a non-cash balance (the “Maintenance Account Balance”) of Fourteen Million Three Hundred Twenty Thousand Dollars (\$14,320,000). Each Developer Maintenance Payment (whether through payments under Section 2.7(f) or through Conditional Maintenance Tax payments under Section 2.7(g)) shall reduce the Maintenance Account Balance by the corresponding amount. At the end of each Fiscal Year, commencing at the end of the Fiscal Year in which the Reference Date occurs, the Maintenance Account Balance shall be credited with interest based on the percentage increase in the Index over the prior twelve month period (except that the first interest credit shall be based on the period from the Reference Date to the end of the Fiscal Year in which the Reference Date occurs). Developer’s obligation to pay any Developer Maintenance Payment shall cease when the Maintenance Account Balance is reduced to \$0. Developer shall have no obligation to increase the Maintenance Account Balance at any time after the account is first established, other than as a result of the accrual of interest earnings as set forth herein.

**Time of Payment.** Developer shall make the Developer Maintenance Payment by the later of (i) June 30 in the year in which the written request is made by Authority or (ii) thirty (30) days following receipt of the written request from Authority. The failure to pay the Maintenance Payment by the later of such dates shall be deemed a “Maintenance Default.”

**Security for Payment.** To secure the payments required in this Section 2.7, the RMA for each CFD shall contain provisions for a Conditional Maintenance Tax. Each RMA shall provide that the Conditional Maintenance Tax shall be levied only as follows:

The Conditional Maintenance Tax may only be levied on property that is (A) owned by Developer at the time of the levy and (B) not subject to a purchase and sale agreement for the sale to a third party that is scheduled to close within six (6) months after the date of the levy.

The Conditional Maintenance Tax may only be levied in the calendar year in which City receives written notice from Authority that a Maintenance Default has occurred.

The Conditional Maintenance Tax may only be levied once in a calendar year.

The Conditional Maintenance Tax may only be levied on a parcel of

property authorized by clause (i) in the amount of such parcel's pro rata share (based on acreage of such parcel to all parcels authorized by clause (i)) of the amount of the Maintenance Default.

The Conditional Maintenance Tax shall be hand billed by City to Developer, and Developer shall have thirty (30) days to pay the amount due.

The failure by Developer to pay the Conditional Maintenance Tax within the time established by clause (v) shall subject the property upon which it is levied to foreclosure by City. The Conditional Maintenance Tax shall have the same lien priority and penalties as the Project Special Taxes.

The Conditional Maintenance Tax shall terminate and shall no longer be levied when, following the Maintenance Commencement Date, the Maintenance Account Balance is \$0.

**Payment of Remaining Balance. If upon Completion of the Northern Wilds, as identified in the Parks and Open Space Plan, a balance remains in the Maintenance Account Balance, Developer, upon Authority's written request, shall pay Authority an amount equal to the remaining balance of the Maintenance Account Balance. Authority shall restrict the use of such funds to a segregated parks and open space fund, conservancy or other separate fund or entity with use restricted to operation and maintenance of the parks and open spaces in the Project Area.**

## **8. CFD Limitations**

**City and Developer agree that each CFD will be formed so that the proceeds of CFD Bonds and Remainder Taxes may be applied to accomplish the following goals in the manner set forth in this Financing Plan: (i) to finance Qualified Project Costs; (ii) to finance Additional Community Facilities; and (iii) to finance Ongoing Park Maintenance. To accomplish these goals, and subject to the limitations set forth in this Section 2.8, and in light of the 2% Limitation and the CFD Goals:**

8.1.1. each CFD will be authorized to finance the Qualified Project Costs, the Additional Community Facilities, and the Ongoing Park Maintenance;

8.1.2. for each CFD, the term for levying Project Special Taxes will be established at no less than 999 years from the first issuance of CFD Bonds in such CFD; and

8.1.3. for each CFD, the amount of authorized bonded indebtedness will be established to allow the issuance of the First Tranche CFD Bonds to finance Qualified Project Costs and the Second Tranche CFD Bonds to finance Additional Community Facilities.

**8.2. The CFD Conversion Date shall be calculated separately for each CFD.**

**8.3. Until the CFD Conversion Date, in a CFD, CFD Bonds will be issued exclusively to finance Qualified Project Costs unless Developer, in its sole discretion, consents in writing to the issuance of CFD Bonds for such CFD to finance Additional**

**Community Facilities.** After the CFD Conversion Date in such CFD, City may issue CFD Bonds to finance Additional Community Facilities or for any other purpose authorized under the CFD Act.

**8.4.** City and the Developer agree that, within a CFD, City shall not be obligated to issue First Tranche CFD Bonds (including refunding bonds) with a final maturity of later than the date that is forty-two (42) years after the issuance of the first series of First Tranche CFD Bonds in such CFD without the Approval of Board of Supervisors in its sole discretion. Unless City and Developer agree otherwise, any CFD Bonds issued to refund First Tranche CFD Bonds shall comply with applicable provisions of the CFD Act pursuant to which refunding bonds will not result in a reduction of the total authorized amount of the bonded indebtedness of a CFD and, in any event, the final maturity date of the refunding bonds shall not exceed the latest maturity date of the First Tranche CFD Bonds being refunded. The previous sentence shall not prevent the issuance of a series of First Tranche CFD Bonds for new money and refunding purposes, so long as the portion of the First Tranche CFD Bonds attributable to the refunding purpose meets the requirements of the previous sentence.

**8.5.** The City intends to include open space improvements, transportation facilities, renewable energy and other sustainability projects, and other public infrastructure within the authorized list of Additional Community Facilities for each CFD. In addition, Additional Community Facilities to be authorized within each CFD shall include, but are not limited to, future improvements necessary to ensure that the shoreline, public facilities, and public access improvements will be protected should sea level rise at the perimeter of the Project Site as set forth in the Infrastructure Plan (the “Future Sea Level Rise Improvements”). If required to be constructed or installed pursuant to the appropriate regulating authorities, City agrees to finance the Future Sea Level Rise Improvements through the proceeds of the Second Tranche CFD Bonds and any Remainder Taxes that become available to City after the CFD Conversion Date pursuant to this Financing Plan, all in the manner required by the appropriate regulating authorities. However, notwithstanding the discretion the Developer has in funding Additional Community Facilities from CFD Bonds prior to the CFD Conversion Date in subsection 2.8(c), for each CFD, if, prior to the CFD Conversion Date, sea levels in the waters surrounding the Project Area rise by more than sixteen (16) inches from the levels in existence on the Reference Date, as defined in the Infrastructure Plan, the Future Sea Level Rise Improvements will be authorized to be financed from First Tranche CFD Bonds of such CFD.

**8.6.**

**8.7.** Pursuant to the definition contained in Section 7.2, the term “CFD” means an Improvement Area if one has been so designated. Accordingly, wherever the word “CFD” appears in this Section 2.8, it also means Improvement Area (with the result being that the CFD Conversion Date shall be calculated separately for each Improvement Area).

#### **IV. INFRASTRUCTURE FINANCING DISTRICT FINANCING**

##### **1. Formation of IFDs**

**1.1. Formation.** At any time, and from time to time, after Authority acquires all or part of the Project Site from the Navy, Developer may request in writing that City establish one or more IFDs under the IFD Act over all or any part of the property so acquired. In its written request, Developer may include proposed specifications for the IFD, including IFD boundaries. Developer's proposed specifications will be based on Developer's development plans, market analysis, and required preferences, but in all cases will be subject to this Financing Plan, the Funding Goals, and compliance with the IFD Act. To ensure compliance with the replacement housing provisions of the IFD Act in the formation of an IFD, City shall consider any input provided by Authority as to the specifics of the IFD formation.

**1.2. Boundaries.** As soon as reasonably practical after receipt of a written request from Developer, City will establish each IFD over all of the Property identified in the written request. If allowed by the IFD Act, the IFD shall include separate Project Areas, as requested by Developer in writing.

**1.3. Authorized Facilities.** Each IFD shall be authorized to finance all of the Qualified Project Costs, irrespective of the geographic location of the improvements financed.

**1.4. Cooperation.** Developer and City shall cooperate reasonably in developing the IFP for each IFD that is consistent with this Financing Plan. Developer and City will each use good-faith reasonable efforts at all times to furnish timely to the other, or to obtain and then furnish to the other, any information necessary to develop the IFP for each IFD.

##### **2. Scope of IFD-Financed Costs**

**3.1. Authorization.** An IFD may finance only Qualified Project Costs that are financeable under the IFD Act.

**3.2. Communitywide Significance.** On the Reference Date, City found and determined that the Qualified Project Costs to be financed by the IFDs are of communitywide significance that provide significant benefits to an area larger than the area of the Project Site (which will be the cumulative boundaries of all IFDs). The Board of Supervisors may be required under the IFD Act to make additional specific findings with respect to financing Qualified Project Costs under the IFD Act. City shall assist in making such findings as and when requested by Developer, subject to applicable law.

##### **Issuance of IFD Debt**

**3.3. Issuance.** Subject to Board of Supervisors Approval and Sections 4.4 and 4.5, City, on behalf of the IFD, intends to issue IFD Debt for purposes of this Financing Plan following Developer's submission of a written request to issue IFD Debt.

Developer may, at any time and from time to time in its discretion, submit written requests that City issue IFD Debt, specifying requested issuance dates, amounts, and main financing terms. Following each of the Developer's request, Developer and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with the Developer's request and the Funding Goals. City may not issue IFD Debt without first receiving a written request from Developer.

**3.4. Coverage Ratio.** Each issue of IFD Debt will be structured with a debt service coverage-ratio that maximizes the proceeds of IFD Debt but is consistent with sound municipal financing practices and assures, to City's reasonable satisfaction, based on calculations, explanations, and other substantial evidence provided by Developer, that the IFD is unlikely to need the Conditional City Increment to pay debt service on the IFD Debt.

**3.5. Term.** Unless Developer and City agree otherwise, and subject to Section 2.8, IFD Debt will have a term that maximizes the proceeds of IFD Debt but is consistent with sound municipal financing practices and any limitations on the amount of Net Available Increment.

**3.6. IFD Debt Proceeds.** Subject to Tax Laws and the IFD Act, Net IFD Proceeds will be used in the following order of priority: (i) to fund required reserves and pay costs of issuance; (ii) to pay Qualified Pre-Development Costs (which do not include any return on such Pre-Development Costs); and (iii) to pay outstanding Qualified Project Costs. The remainder will be deposited into the IFD Debt Project Account as designated in the Indenture and must be used only to pay for Qualified Project Costs.

**3.7. Conditional City Increment.** Developer and City agree that, if permitted under existing law, City would have subordinated its right to receive its share of Increment other than Net Available Increment to the payment of debt service on IFD Debt. However, under existing law (including the IFD Act), the City cannot do so. Accordingly, City and Developer agree that, for each IFD, City will allocate in the IFP Conditional City Increment to such IFD for the limited purpose of paying debt service on IFD Debt in the event that Net Available Increment is insufficient for that purpose. In the event that Conditional City Increment is used to pay debt service on the IFD Debt, City will be entitled, in the manner set forth in Section 3.5(d), to retain in its General Fund, without any limitation as to use under this Financing Plan, Net Available Increment in an amount equal to the Conditional City Increment used to pay debt service on the IFD Debt plus interest through the date of repayment of the amount of Conditional City Increment used to pay debt service on the IFD Debt at the Default Interest Rate.

**3.8. Subordination.** At the request of Developer, the City will submit a Subordination Request to each of the Other Taxing Agencies at least ninety (90) days prior to the date proposed for delivery of a preliminary official statement for any IFD Debt. Developer acknowledges that, under existing law (including the IFD Act), the Subordination Request must be undertaken in connection with the formation of an IFD

and would take the form of a conditional allocation of Increment by the Other Taxing Agencies.

**4. Pledge of Net Available Increment**

**4.1. Pledge of Net Available Increment.** City agrees that each IFD, when formed, will irrevocably pledge the Net Available Increment to the financing of the Qualified Project Costs, to the repayment of any Conditional City Increment used to pay debt service on IFD Debt in the manner set forth in Section 3.5(d) and to the extent set forth in Section 3.3(e), and to any IFD Debt issued. City will take all actions necessary under the IFD Act and the policies of the County Assessor to ensure that Net Available Increment will be available for purposes of this Financing Plan, including filing any required annual Statement of Indebtedness. Except for the subordinate pledge of Net Available Increment pursuant to the Navy Promissory Note (the “Subordinate Pledge”), City represents and warrants that there are no other pledges of Net Available Increment to any other projects or persons, and that City will not pledge, encumber, assign, allocate, or otherwise promise the Net Available Increment to any other projects or persons other than as set forth in this Financing Plan.

**5. Budget Procedures**

**5.1. Estimate of Net Available Increment.** No later than April 1 of each year, City staff will meet and confer with Developer with respect to the projected amount of Net Available Increment for the next Fiscal Year for each Major Phase. City will provide Developer with: good faith estimates, for the next Fiscal Year, of: (A) Net Available Increment (based, in part, upon information provided by Developer as to any new development and Transfers of property); and (B) the amount of any debt service on Public Financings secured by a pledge of and expected to be paid from Net Available Increment. The April 1 date referred to in this Section 3.5(a) is based on the current budget process of the City. Developer and City will adjust the dates as appropriate if the City alters its budget process in the future.

**5.2. City Budget.** Subject to the IFD Act and the Funding Goals, and based upon the information provided by Developer, City shall:

5.2.1. budget the expenditure of the expected Net Available Increment only to: (A) pay debt service due in the next Fiscal Year on any applicable Public Financing incurred or to be incurred to pay Qualified Project Costs; (B) repay the City for any Conditional City Increment used to pay debt service on IFD Debt in the manner set forth in Section 3.5(d) and to the extent set forth in Section 3.3(e); and (C) finance Qualified Project Costs; and

5.2.2. apply any Net Available Increment it receives to the budgeted purposes, subject to the covenants of the applicable Indentures for IFD Debt and the Funding Goals.

**5.3. Purpose of Pledge.** Developer and City shall use all Net Available Increment in each Fiscal Year as provided in this Financing Plan, and City shall prepare its annual budget to reflect its obligations under this Financing Plan. Qualified Project

**Costs that Developer incurs will be eligible for financing from the Funding Sources in each Fiscal Year until such Qualified Project Costs are financed in full.**

**5.4. Use of Net Available Increment. After first paying or setting aside amounts needed for debt service due on IFD Debt secured by or payable from Net Available Increment during Fiscal Year, and then after repaying the City for any Conditional City Increment used to pay debt service on IFD Debt as set forth in Section 3.3(e), City will use all Net Available Increment to finance Developer's Qualified Project Costs pursuant to this Financing Plan. In addition, upon and as allocated in Developer's written request, Authority will use all or any part of Net Available Increment to:**

5.4.1. pay debt service on other Public Financing to the extent it financed Qualified Project Costs; and

5.4.2. refund or defease before maturity a Public Financing that financed Qualified Project Costs.

**6. Housing Costs.**

**6.1. Housing Proceeds. For each IFD, City and Developer agree that a portion of the IFD Proceeds for such IFD in any Fiscal Year shall be applied to finance the Housing Costs in the following manner:**

6.1.1. If, in the written opinion of bond counsel to the City, all Housing Costs are or become authorized to be financed by the IFD Law, then an amount calculated by multiplying the Net Available Increment in any Fiscal Year by the Housing Percentage shall be used by the IFD to pay for Housing Costs. Amounts reserved for Housing Costs may, at the written direction of Authority, (A) be transferred to Authority to be held in the Housing Fund and applied to pay Housing Costs, or (B) secure on a first lien basis the issuance of IFD Debt, the proceeds of which will be used to pay for Housing Costs; or

6.1.2. If, in the written opinion of bond counsel to the City, all Housing Costs are not authorized to be financed by the IFD Law, then, in paying any Payment Request authorized pursuant to the Acquisition and Reimbursement Agreement, City shall pay (A) to Authority on behalf of Developer from amounts that would otherwise be paid to Developer pursuant to the Payment Request for deposit in the Housing Fund an amount calculated by multiplying the amount being paid pursuant to the Payment Request by the Housing Percentage and (B) to Developer the balance of the amount being paid pursuant to the Payment Request. Amounts paid to Authority on behalf of Developer pursuant to this subsection (ii) are not the proceeds of IFD Debt, but are funds that Developer is entitled to receive from the sale of Improvements pursuant to a Payment Request that Developer is agreeing to be applied on Housing Costs.

**6.2. Combination of Financing Housing Costs. If, in the written opinion of bond counsel to the City, a portion, but not the entirety of the Housing Costs is or becomes authorized to be financed by the IFD Law, then Authority and Developer may provide for the financing of Housing Costs by some combination of subsections (a)(i) and (a)(ii) by providing written direction to City as to the implementation and priority of**

**subsections (a)(i) and (a)(ii) and the amount of the Housing Percentage to be applied to determine (A) the amount of Net Available Increment to be reserved for Housing Costs pursuant to subsection (a)(i), and (B) the amounts payable from Payment Requests pursuant to subsection (a)(ii).**

**7. Miscellaneous IFD Provisions**

**7.1. Shortfall. Developer agrees to the following measures to avoid shortfalls in projected Net Available Increment for the Project.**

7.1.1. If, after the IFD issues any IFD Debt under this Financing Plan that is secured by a pledge of Net Available Increment, Developer initiates a proceeding under the California Revenue & Taxation Code (a “**Reassessment**”) to reassess the value of the parcels then owned by Developer encumbered by an IFD for which IFD Debt was issued (the “**Encumbered Parcels**”), that results in a decrease in ad valorem property taxes levied on the Encumbered Parcels, Developer must pay to City in a Fiscal Year the amount equal to: (A) the amount of ad valorem property taxes that would have been levied on the Encumbered Parcels in such Fiscal Year if the Reassessment had not occurred; less (B) the amount of ad valorem property taxes actually levied on the Encumbered Parcels in such Fiscal Year (the difference being the “**Additional Payments**”).

7.1.2. Developer’s obligation to make Additional Payments will begin in the Fiscal Year following the Reassessment and continue until the earlier of: (A) the date that the IFD Debt outstanding on the date of the Reassessment is repaid in full or defeased before maturity for any reason other than a refunding; or (B) the date that the amount of the Additional Payments is reduced to zero or less due to a subsequent reassessment of the Encumbered Parcels for any reason.

7.1.3. Developer and City intend for this Section 3.7(a) to apply only to Public Financing payable or secured only by Net Available Increment, and not to any other Public Financing issued by Authority or the City. Developer’s obligations under this Section 3.7(a) are not for the benefit of any CFD Bonds. Should the Tax Laws change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt IFD Debt to be deemed taxable due to the requirements under clause (i) or (ii), City will release Developer from its obligations under this Section 3.7(a), and this Section 3.7(a) will be deemed severed from this Financing Plan under section 27.19 of the DDA.

7.1.4. Developer and City understand and agree that City would not be willing to enter into this Financing Plan without the agreement set forth in this Section 3.7(a).

**7.2. Reserve Fund Earnings. The Indenture for each issue of IFD Debt will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred to: (i) the IFD Debt Project Account for allowed uses until it is closed in accordance with the Indenture; then (ii) the debt service fund held by the Fiscal Agent under the Indenture.**

**7.3. Material Changes to the IFD Act. The IFD Act is currently the subject of pending legislation, and it is likely that the IFD Act will be the subject of**



legislation in the next several years, including legislation promulgated by City and Developer. In the event of any change to the IFD Act that occurs after the Reference Date, City, Authority, and Developer shall meet and confer and negotiate in good faith any appropriate changes to this Financing Plan, the City DA, and any existing IFD to reflect changes to the DDA agreed upon by Authority and Developer in accordance with Section 3.8.2 of the DDA.

8. IFDs and Net Available Increment Upon Termination

8.1. Notice of Termination. In the event that Authority terminates all or any portion of the DDA before the issuance of the last Certificate of Completion for the Project for any reason, Authority shall send City a Termination Notice providing the details of the termination and whether or not the termination was due to a Selected Default.

8.2. Formation of IFDs After Termination. Any IFD formed over any part of the Project Site for each Other Developer following receipt of a Termination Notice for a non-Selected Default shall authorize the financing of the Island Wide Costs of Developer in the IFP so that such Island Wide Costs of Developer may be financed as set forth in this Section 3.8. City shall have no such obligation with respect to any IFD formed over any part of the Project Site for each Other Developer following receipt of a Termination Notice for a Selected Default.

8.3. Non-Selected Defaults. In the event the Termination Notice indicates that the termination was for any reason other than a Selected Default, then from and after the date that such Termination Notice is received by City, City shall distribute the IFD Proceeds as follows:

8.3.1. The IFD Proceeds generated from the property in the Project Site that Developer has previously acquired from Authority (regardless of current ownership of such property) shall be reserved for, and paid upon request by, Developer to finance Developer's Island Wide Costs until all Island Wide Costs incurred by Developer are fully financed by IFD Proceeds.

8.3.2. Fifty percent (50%) of the IFD Proceeds generated from Non-Developer Property ("**Termination Proceeds**") shall be reserved for, and paid upon request by, Developer to finance Developer's Island Wide Costs until all Island Wide Costs incurred by Developer are financed by such Termination Proceeds; provided, that such Termination Proceeds may not be applied to pay Pre-Development Costs except for Pre-Development Costs incurred prior to the Reference Date ("**Liquidated Pre-Agreement Costs**") and then only in the amount not to exceed five percent (5%) of such Termination Proceeds. Developer and City shall agree in writing on the amount of the Liquidated Pre-Agreement Costs within ninety (90) days following the Reference Date, and the amount of Liquidated Pre-Agreement Costs shall not include any return on such costs. If City and Developer do not agree in writing on the amount of the Liquidated Pre-Agreement Costs within such 90-day time period, City and Developer shall work in good faith to agree in writing on the amount of the Liquidated Pre-Agreement Costs as soon as practical thereafter; provided, however, that City shall have no obligation to initiate formation of

an IFD until City and Developer have agreed in writing to the amount of the Liquidated Pre-Agreement Costs.

8.3.3. Upon the occurrence and during the continuance of a High IRR Period, Authority may provide a written notice to City indicating that there is a High IRR Period. Notwithstanding anything in clause (ii), upon receipt of the written notice about the High IRR Period, the City shall suspend distribution of IFD Proceeds to Developer pursuant to clause (ii). Immediately upon the conclusion of a High IRR Period, Authority shall provide a written notice to City indicating that the High IRR Period has ended, and immediately upon receipt of such written notice, the suspension shall end and City shall resume making payments to Developer of IFD Proceeds pursuant to clause (ii).

8.3.4. Once all of Island Wide Costs incurred by Developer are financed with IFD Proceeds, or during any period of suspension, IFD Proceeds generated from Non-Developer Property shall be distributed as agreed to by City and Authority.

**8.4. Selected Defaults. In the event the Termination Notice indicates that the termination was due to a Selected Default, then from and after the date that such Termination Notice is received by City, City shall distribute the IFD Proceeds as follows:**

8.4.1. The IFD Proceeds generated from the property in the Project Site that Developer has previously acquired from Authority (regardless of current ownership of such property) shall be paid to Developer to finance Developer's Island Wide Costs until all Island Wide Costs incurred by Developer are financed by IFD Proceeds.

8.4.2. All of the IFD Proceeds generated from Non-Developer Property shall be paid to each Other Developer of such other property to use exclusively to pay its respective Island Wide Costs.

**8.5. Definition of Categories of Island Wide Costs. As a condition of Approval for the Initial Major Phase Application, Authority, City and Developer shall have agreed in writing upon the categories of Island Wide Costs.**

## **9. Net Available Increment Under Certain Situations**

**9.1. Application During Higher IRR Period. Upon the occurrence and during the continuance of a Higher IRR Period, Authority may provide a written notice to City indicating that there is a Higher IRR Period. Upon receipt of the written notice about the Higher IRR Period, the City shall suspend distribution of Net Available Increment remaining after payment of debt service due on IFD Debt and any other Public Financing. Immediately upon the conclusion of a Higher IRR Period, Authority shall provide a written notice to City indicating that the Higher IRR Period has ended, and immediately upon receipt of such written notice, the suspension shall end and City shall resume making payments to Developer of Net Available Increment in the manner set forth in this Financing Plan.**

**9.2. Application in Event of Default. Upon the occurrence of and only for the duration of and to the extent of any default in Authority's payment of Initial Navy**

Consideration under the Conveyance Agreement which is caused by an Event of Default by the Developer under the DDA, Authority may provide a written notice to City indicating that an Event of Default has occurred, and City shall suspend distribution of Net Available Increment remaining after payment of debt service due on IFD Debt and any other Public Financing until the Event of Default is cured. City shall hold any Net Available Increment withheld from Developer for the account of the Navy until the Event of Default is cured. Immediately upon the curing of the Event of Default, Authority shall provide a written notice to City indicating that the Event of Default has been cured, and immediately upon receipt of such written notice, the suspension shall end and City shall resume making payments to Developer of Net Available Increment in the manner set forth in this Financing Plan.

**9.3. Use of Net Available Increment During Suspension Periods.** During any period that the application of Net Available Increment under this Financing Plan is suspended pursuant to Sections 3.8(c)(iii), 3.9(a), and 3.9(b), City may, unless otherwise permitted by this Financing Plan, use such Net Available Increment on a pay-as-you-go basis only (i.e., such amounts may not be pledged to any indebtedness) to finance the following costs to the extent allowed by the IFD Act and so long as such uses does not adversely affect the tax-exemption of the interest on any IFD Debt:

9.3.1. Installment Payments then due and unpaid; then

9.3.2. Future Installment Payments by a deposit to the Navy Payment Escrow until such time as the amount in the Navy Payment Escrow is sufficient to pay all remaining unpaid Installment Payments; then

9.3.3. Payment of any Financial Obligations that would have been the obligation of Developer; then

9.3.4. In any combination: (A) facilities benefitting the Project or the Project Site; or (B) payment of the Housing Costs (including any affordable housing subsidy).

## **V. ALTERNATIVE FINANCING AND PUBLIC FINANCING GENERALLY**

### **1. Alternative Financing**

**1.1. Request for Alternative Financing.** Authority acknowledges and agrees that other methods of Public Financing for Qualified Project Costs may be viable, become available, or become necessary due to a Change in Law that affects the Funding Sources: (i) before Developer's completion of the Infrastructure; or (ii) before Developer's full reimbursement for Project Costs. These other methods may include any municipal debt financing vehicle then available under applicable law, including tax-exempt bonds, taxable bonds, tax-credit bonds, federal or State loans incurred by Authority, the City, or a joint powers authority for application towards Qualified Project Costs and secured by Net Available Increment or Project Special Taxes, or special assessments or fees on Taxable Parcels of commercial property in the Project Site through a community taxing district formed by City ordinance (collectively, "Alternative Financing"). Therefore, from time to time, so long as Developer's Project Costs have not

**been fully paid or reimbursed, Developer may submit a written request for Alternative Financing, describing:**

1.1.1. the Qualified Project Costs to be financed with the proceeds of the Alternative Financing;

1.1.2. if the Qualified Project Costs relate to construction, the Completion date or estimated Completion date for the related Infrastructure;

1.1.3. if the Qualified Project Costs relate to construction, the then current construction schedule for any other improvements to be made by Developer; and

1.1.4. the Alternative Financing.

**1.2. Implementation.** Following Developer's request for Alternative Financing, Developer and Authority will meet with appropriate Authority or City consultants as to the necessity, feasibility, amount, and timing of the proposed Alternative Financing. Neither the City nor Authority will be required to implement Alternative Financing that: (i) is not consistent with the Funding Goals or (ii) proposes to tax or assess Exempt Parcels.

**1.3. Financing.**

1.3.1. If an Alternative Financing contemplates the formation of a CFD and the pledge of Project Special Taxes, Developer may petition City, as applicable, to form one or more CFDs over the Project Site in the manner and subject to parameters and limitations that differ from CFDs formed pursuant to Section 2 so long as Developer agrees to such terms in writing. Any such Alternative Financing CFDs may overlap all or any of the CFDs formed pursuant to Section 2.

1.3.2. If an Alternative Financing contemplates the pledge of Net Available Increment, Developer and Authority may mutually agree to adjust the application of Net Available Increment to accomplish the Alternative Financing.

**2. Formation and Issuance Alternatives**

**2.1. Alternative Formation Entity.** Developer and City may agree in writing that the Governmental Entity forming a CFD or an IFD may be other than City, so long as the formation of the CFD or IFD by the Governmental Entity is consistent with this Financing Plan and is allowed by the CFD Act or IFD Act, as applicable.

**2.2. Alternative Financing Mechanisms to Further Funding Goals.** One of the Funding Goals of this Financing Plan is to maximize Funding Sources available to finance Qualified Project Costs. To achieve this Funding Goal, City and Developer acknowledge that it may be necessary or desirable to aggregate revenue sources from two or more IFDs or CFDs to support Public Financing through a financing mechanism other than the issuance of Public Financing by City, including, but not limited to the issuance of revenue bonds or other indebtedness by another Governmental Entity (such as a local

joint powers authority or a multiple-entity joint powers authority like CSCDA or ABAG) secured by CFD Bonds, IFD Debt, Project Special Taxes, and/or Net Available Increment. Developer and City will cooperate to evaluate and implement opportunities for such alternative financing mechanisms provided that such mechanisms further the Funding Goals and are consistent with this Financing Plan.

### **3. Grants**

**3.1. Cooperation.** Authority and Developer will work together to seek appropriate Project Grants for the Project.

**3.2. Authority Project Grants.** Subject to the conditions in Project Grant documents and applicable law, Authority will use Project Grants it procures in the following order of priority: (i) first, to finance Project Costs that are not Qualified Project Costs under clauses (a), (b), (c), and (e) of the definition of “Qualified” (but in no circumstances would it be used to pay for a return on Pre-Development Costs); (ii) second, to finance the Qualified Project Costs incurred in connection with the Parks and Open Space Plan; (iii) third, to finance the costs of purchasing ferry boats for use on the Project Site; and (iv) fourth, to finance any other Qualified Project Costs. At the election of Authority, up to 50% of the Project Grant funds may be used for costs that benefit the Project (but that are not Project Costs).

**3.3. Developer Project Grants.** Subject to the conditions in Project Grant documents and applicable law, Developer will use Project Grants it procures to finance Project Costs.

### **4. Provisions Applicable To All Public Financings**

**4.1. Acquisition and Reimbursement Agreement.** Developer and City will execute the Acquisition and Reimbursement Agreement (with only such changes as may be Approved by Developer and City in their respective sole discretion) before the earlier of: (i) the date the first Developer Construction Obligation is Commenced; or (ii) the date of the first Sub-Phase Approval. The Acquisition and Reimbursement Agreement describes the procedures by which: (x) Developer will seek reimbursement of Qualified Project Costs and Authorized Payments; (y) City and Authority will inspect and accept Infrastructure and other Improvements that Developer is required to construct under the DDA and City DA; and (z) City will approve Developer’s Payment Requests. City will reimburse Developer for Qualified Project Costs and Authorized Payments with any combination of Funding Sources then available for City’s use, subject to any priority established in the Acquisition and Reimbursement Agreement. City will acquire the Infrastructure and other Improvements from Developer in accordance with, and subject to the limitations set forth in, the Acquisition and Reimbursement Agreement and applicable Supplements. Developer acknowledges that it must satisfy the conditions set forth in the Acquisition and Reimbursement Agreement as a condition to receiving reimbursement for any Authorized Payments or Qualified Project Costs.

**4.2. Financing Temporarily Excused. City will be authorized to temporarily suspend the issuance of any Public Financing (and Authority will not be obligated to provide Project Grant proceeds if clause (i), (ii), or (iii) applies), and neither Authority nor the City will be obligated to issue any Alternative Financing, to finance Qualified Project Costs during the time in which:**

4.2.1. Developer is in default in the payment of any ad valorem tax or Project Special Taxes levied on any Taxable Parcel it then owns in the Project Site;

4.2.2. Developer is in Material Breach under the DDA;

4.2.3. Developer fails to cooperate reasonably with Authority or the City as necessary to implement Public Financing consistent with this Financing Plan;

4.2.4. in the judgment of Authority or the City, as applicable, after consultation with Developer, and based upon the Funding Goals and advice of Authority or City staff and consultants, market conditions or conditions affecting the property in the Project Site (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation) make it fiscally imprudent or infeasible to incur the requested indebtedness at the time; or

4.2.5. the First Tranche CFD Bond or IFD Debt underwriter (the “**Underwriter**”) for any bond issue exercises any right to cancel its obligation to purchase the First Tranche CFD Bonds or IFD Debt during the occurrence and continuation of events specified in its bond purchase agreement with Authority (“**Underwriter Force Majeure**”).

**4.3. Developer Financing Costs. Developer will not be entitled to reimbursements from any Public Financing for its financing costs (consisting of interest carry and lender fees) for any Infrastructure construction financing:**

4.3.1. to the extent that the costs are commercially unreasonable as of the date that the payment obligation was incurred;

4.3.2. while Developer is in default in the payment of any ad valorem taxes or Project Special Taxes levied on any of the Taxable Parcels it then owns or while Developer is in Material Breach under the DDA; or

4.3.3. if the costs arise more than ninety (90) days after the later to occur of: (A) the date on which City has found the related Infrastructure to be Complete under the Acquisition and Reimbursement Agreement; and (B) Developer has been reimbursed fully for the related Qualified Project Costs from Funding Sources.

**4.4. Continuing Disclosure. Developer must comply with all of its obligations under any continuing disclosure agreement it executes in connection with the offering and sale of any Public Financing. Developer acknowledges that a condition to the issuance of any Public Financing may be Developer’s execution of a continuing disclosure agreement.**

**4.5. Qualified Pre-Development Costs.** To the extent required, (i) each CFD and IFD will be authorized at formation to finance the Qualified Pre-Development Costs and (ii) the payment of the Qualified Pre-Development Costs (which do not include any return on such Pre-Development Costs) will be budgeted in the same manner as Qualified Project Costs in Section 3.5.

**5. Terms of the Public Financings**

**5.1. Meet and Confer.** City staff and consultants will meet and confer with Developer before the sale of any Public Financing to discuss the terms of any proposed debt issue, but City will determine the final terms in its reasonable discretion in light of the Funding Goals and subject to this Financing Plan. City will not enter into any Indenture for any form of Public Financing that is not bonded indebtedness, if the indebtedness must be secured by or repaid with Net Available Increment or Project Special Taxes without Developer's express written consent, which may be granted or withheld based on all relevant factors, including the timing and availability of funds, credit enhancement requirements, applicable interest rate and other repayment terms, and other conditions to the proposed indebtedness.

**5.2. Credit Enhancement.** Any Developer credit enhancements for Public Financing must be without recourse to the City's General Fund or Authority's general funds or other assets (other than Net Available Increment to the extent pledged to the payment of Public Financing obligations). Any financial institution issuing a credit enhancement must have a rating of at least "A" from Moody's Investor's Service Inc. or Standard & Poor's Rating Service, or the equivalent rating from any successor rating agency mutually acceptable to Developer and City, on the date of issuance and at any later credit renewal date. Developer must provide substitute credit enhancements for any credit enhancement that does not meet this rating standard on a credit renewal date. If the fees (and replenishment of any draw or other use of the collateral for the obligation it secures) for any Developer credit enhancements will be reimbursable from funds other than Developer funds, they may be reimbursed from Project Special Taxes or Net Available Increment, as applicable, on a basis subordinate to any debt service and other annual costs for any related outstanding Public Financing.

**5.3. Tax-Exempt or Taxable.** Developer and City shall cooperate to maximize the tax-exempt treatment of any Public Financing, but Developer and City may agree to issue taxable Public Financings.

**5.4. No Other Land-Secured Financings.** Other than the CFDs and the IFDs, City shall not to form any additional land-secured financing district or any district that pledges Increment over any portion of the property in the Project Site without Developer's Approval in its sole discretion.

**6. Reimbursements for Qualified Project Costs**

**6.1. Limited Reimbursement.** Developer, City, and Authority acknowledge that:

6.1.1. Developer is agreeing to pay for the Project Costs with the expectation that Developer will be reimbursed to the extent and in the manner set forth in this Financing Plan and the Acquisition and Reimbursement Agreement, subject to applicable laws and any financing instruments;

6.1.2. Developer may be required to begin paying Project Costs before Funding Sources to reimburse Developer are available;

6.1.3. Developer will be reimbursed for Qualified Project Costs and paid Authorized Payments in any number of installments as Funding Sources become available in accordance with this Financing Plan and the Acquisition and Reimbursement Agreement, with any unpaid balance deferred as long as necessary (subject to limitations on Funding Sources under applicable laws and financing instruments), until Funding Sources become available;

6.1.4. Developer's payment of Project Costs before the availability of Funding Sources to reimburse Qualified Project Costs is not a dedication or gift, or a waiver of Developer's right to reimbursement for Qualified Project Costs under this Financing Plan; and

6.1.5. Funding Sources may not be sufficient to pay all of Developer's Qualified Project Costs and Authorized Payments.

**6.2. Acquisition of Infrastructure. Developer, City, and Authority acknowledge that:**

6.2.1. Developer may be constructing Infrastructure before Funding Sources that will be used to acquire it are available;

6.2.2. The Department of Public Works will inspect Infrastructure and other Improvements and process Payment Requests even if Funding Sources for the amount of pending Payment Requests are not then sufficient to satisfy them in full;

6.2.3. Infrastructure may be conveyed to and accepted by the City before the applicable Payment Requests are paid in full;

6.2.4. If the City, Authority, or other Governmental Entity accepts Infrastructure before the applicable Payment Requests are paid in full, the unpaid balance will be paid when sufficient Funding Sources become available, and the Acquisition and Reimbursement Agreement will provide that the applicable Payment Requests for Infrastructure accepted by the City, Authority, or other Governmental Entity may be paid: (A) in any number of installments as Funding Sources become available; and (B) irrespective of the length of time payment is deferred; and

6.2.5. Developer's conveyance or dedication of Infrastructure to the City, Authority, or other Governmental Entity before the availability of Funding Sources to acquire the Infrastructure is not a dedication or gift, or a waiver of Developer's right to payment of Qualified Project Costs under this Financing Plan.

**VI. POLICE, FIRE STATION AND PUBLIC PARKING FINANCING**



**1. Request for Financing From City**

**1.1. Lease Revenue Bonds.** City agrees to consider Developer's request for financing certain Infrastructure, including but not limited to the fire and police station and the public parking garages, with certificates of participation or lease revenue bonds, with the related lease payments to be reimbursed and paid from Funding Sources when available and the certificates of participation or lease revenue bonds to be refinanced with a Public Financing when feasible. Developer and Authority acknowledge that the City shall have no obligation to provide any such certificate of participation or lease revenue bond financing.

**VII. MISCELLANEOUS PROVISIONS**

**1. Interim Lease Revenues**

**1.1. Distribution of Interim Lease Revenues.** Interim Lease Revenues shall be collected by Authority, and distributed according to the following priorities:

1.1.1. Through each Fiscal Year, Authority will use the Interim Lease Revenues to pay Authority Costs that the Authority has incurred and that have not been previously reimbursed; then

1.1.2. On June 30 of each Fiscal Year, Authority will apply any remaining Interim Lease Revenues to any Installment Payment then due and unpaid; then

1.1.3. On June 30 of each Fiscal Year, Authority will apply any remaining Interim Lease Revenues to the Navy Payment Escrow until such time as the amount in the Navy Payment Escrow is sufficient to pay all remaining unpaid Installment Payments; then

1.1.4. On June 30 of each Fiscal Year, Authority will either (i) transfer to Developer any remaining Interim Lease Revenues (the "**Net Interim Lease Revenues**"), if authorized; provided, however, that Developer shall only use the Net Interim Lease Revenues for Qualified Project Costs, or (ii) expend the Net Interim Lease Revenues on Qualified Project Costs at the direction of Developer. In either case, Developer will treat such Net Interim Lease Revenues as Gross Revenues.

**1.2. Material Default.** Subject to the previous paragraph, all distributions of Net Interim Lease Revenues to Developer under Section 6.1(a)(iv) shall be withheld for the benefit of the Authority upon the occurrence of and for the duration of any Material Default under the DDA and may be applied by the Authority to any of its payment obligations with respect to the Project, including, but not limited to, payment of Initial Navy Consideration and Additional Consideration, construction of Infrastructure if the security provided by Developer is not sufficient for that purpose, payment of the affordable housing subsidy, payment of Authority Costs, and any other Financial Obligations that otherwise would have been the obligation of Developer.

**2. Marina Revenues**

2.1. Use of Marina Revenues. Marina Revenues shall be used by Authority to pay Authority Costs.

2.2. Interim Lease Revenues. To the extent that any Marina Revenues are considered Interim Lease Revenues, those Marina Revenues shall be used to pay Authority Costs under Section 6.1(a)(i).

3. Key Money

3.1. Sale of Project Site Property. In the event that (i) Authority terminates all or any portion of the DDA before the issuance of the last Certificate of Completion for the Project for any reason other than a Selected Default and (ii) Authority sells all or any part of the Project Site included in the termination that Authority did not otherwise convey to Developer (the “Unconveyed Property”) or enters into an agreement with respect to the Unconveyed Property for which compensation is paid to Authority, then, through the escrow for the sale of such Unconveyed Property or upon receipt of any other compensation relating to such Unconveyed Property, Authority shall pay to Developer the Net Sale Proceeds associated with such Unconveyed Property until the Deficit is paid in full.

3.2. Deficit. For purposes of this Section 6.3, the term “Deficit” shall mean the amount calculated pursuant to the following formula so long as such amount is greater than \$0:

(Installment Payments actually paid by Developer)

minus

(Acreage Percentage Acquired x Total Installment Payments)

VIII. INTERPRETATION; DEFINITIONS

1. Interpretation of Agreement

1.1. DDA. This Financing Plan is a part of the DDA and the City DA and is subject to all of its general terms, including the rules of interpretation.

1.2. Inconsistent Provisions. Developer, City, and Authority intend for this Financing Plan to prevail over any inconsistent provisions relating to the financing structure for the Project and their respective financing-related obligations in any other document related to the Project.

2. Defined Terms

3.1. Definitions. The following terms have the meanings given to them below or are defined where indicated.

**“Accounting”** means a complete accounting and computations setting forth the basis of each Additional Consideration to be paid, including the Gross Revenues and Development Costs for the relevant determination period, together with a narrative description of the methodology employed to calculate each Additional Consideration payment to be due for the relevant period.

**“Acquisition and Reimbursement Agreement”** means the agreement between Developer and City governing the terms of City’s acquisition of Infrastructure and reimbursement of Qualified Project Costs, in the form attached to this Financing Plan as Attachment A, as the same may be modified or amended from time to time.

**“Acreage Percentage Acquired”** means the percentage calculated by dividing (i) the cumulative total amount of acreage of the Market Rate Lots acquired by Developer from Authority by (ii) the cumulative total amount of acreage of Market Rate Lots programmed on lands conveyed by the Navy to Authority which is estimated to be approximately 60 acres [to be confirmed].

**“Additional Community Facilities”** means any public facilities that may be financed by City with Second Tranche CFD Bonds and Remainder Taxes under applicable law and in the manner set forth in this Financing Plan, and shall include but not be limited to the Future Sea Level Rise Improvements.

**“Additional Consideration”** means the First Tier Payments and the Second Tier Payments.

**“Additional Payments”** is defined in Section 3.7(a)(i).

**“Adequate Security”** is defined in the DDA.

**“Affiliate”** is defined in the DDA.

**“Affordable Housing Units”** is defined in the Housing Plan.

**“Alternative Financing”** is defined in Section 4.1(a).

**“Annual Report”** is defined in Section 1.6(a).

**“Approval”** and any variation thereof (such as **“Approved”** or **“Approve”**) is defined in the DDA.

**“Assigned Project Special Tax Rate”** is defined in Section 2.3(d).

**“Authority”** means the Treasure Island Development Authority.

**“Authority Board”** is defined in the DDA.

**“Authority Consideration”** means, collectively, the Authority Second Tier Payments and the Authority Third Tier Payments.

**“Authority Cost Payment”** is defined in the Conveyance Agreement.

**“Authority Costs”** is defined in the DDA.

**“Authority Second Tier Payment”** is defined in Section 1.3(c)(iii).

**“Authority Third Tier Payment”** is defined in Section 1.3(c)(iv).

**“Authorized Payments”** is defined in the Acquisition and Reimbursement Agreement.

**“Backup Project Special Tax Rate”** is defined in Section 2.3(g).

**“Board of Supervisors”** is defined in the DDA.

**“Building”** means any structure to be constructed within a CFD, including structures that contain Taxable Residential Units, commercial, industrial, science and technology, research and development, and office uses.

**“Cash Flow Distribution Termination Date”** means the date on which there are no longer any Gross Revenues generated by the Project.

**“Certificate of Completion”** is defined in the DDA.

**“CFD”** means (i) a community facilities district formed over all or any part of the Project Site that is established under the CFD Act to finance Qualified Project Costs and Additional Community Facilities, or (ii) if designated, an Improvement Area within a community facilities district formed over all or any part of the Project Site, which Improvement Area has been designated under the CFD Act to finance Qualified Project Costs and Additional Community Facilities.

**“CFD Act”** means the Mello-Roos Community Facilities Act of 1982 (Gov’t Code § 53311 et seq.), as amended from time to time.

**“CFD Bonds”** means one or more series of bonds (including refunding bonds) secured by the levy of Project Special Taxes in a CFD, including First Tranche CFD Bonds and Second Tranche CFD Bonds.

**“CFD Bonds Project Account”** means the funds or accounts, however denominated, held by the Fiscal Agent under an Indenture containing the Net CFD Proceeds to be used to finance Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities.

**“CFD Conversion Date”** means, calculated separately for each CFD, the earliest to occur of (i) the date that all Qualified Project Costs have been paid or reimbursed to Developer for the Project as a whole, or (ii) the date that is forty-two (42) years after the issuance of the first series of First Tranche CFD Bonds in such CFD.

“**CFD Goals**” means, subject to Section 2.6(g), City’s Local Goals and Policies for Community Facilities Districts, approved by Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, and as thereafter amended from time to time.

“**Change In Law**” means legislation enacted by the Congress of the United States, by the legislature of the State or the enactment of a regulation or statute by any Governmental Entity (other than City or Authority or any related entities) with jurisdiction over City or Authority.

“**Change Proceedings**” means proceedings under section 53332 of the CFD Act initiated by Developer’s petition.

“**City**” means the City and County of San Francisco.

“**City DA**” means the Development Agreement by and between City and Developer relative to Naval Station Treasure Island.

“**City’s General Fund**” means the City’s general operating fund, into which taxes are deposited, excluding dedicated revenue sources for certain municipal services, capital projects, and debt service.

“**Commence**” is defined in the DDA.

“**Complete**” (or its variant “Completion”) is defined in the DDA.

“**Conditional City Increment**” means, for each IFD, the amount allocated by the City on a conditional basis to such IFD for the purposes described in Section 3.3(e), which shall be equal to \$0.077 of every dollar of Increment (which amount will come from Increment that would have otherwise been allocated to City).

“**Conditional Maintenance Tax**” shall mean a special tax that may be levied under an RMA only upon the occurrence of a Maintenance Default and only in the manner and in the amount set forth in Section 2.7(f).

“**Conveyance Agreement**” is defined in the DDA.

“**CPA**” means an independent certified public accounting firm Approved by Authority and Developer.

“**DDA**” means that certain Disposition and Development Agreement (Treasure Island/Yerba Buena Island) to which this Financing Plan is attached.

“**Default Interest Rate**” means an interest rate of three hundred (300) basis points above the Interest Rate.

“**Deficit**” is defined in Section 6.3(b).

**“Department of Public Works”** is defined in the DDA.

**“Developed Property”** means, in any Fiscal Year, an assessor’s parcel of taxable property included in a recorded final subdivision map before January 1 of the preceding Fiscal Year, and for which a building permit has been issued before May 1 of the preceding Fiscal Year.

**“Developer”** is defined in the DDA.

**“Developer Construction Obligations”** means, to the extent required under the DDA in connection with the Project, Developer’s obligation to construct or cause the construction of the Project in accordance with the Schedule of Performance, including: (a) the Infrastructure; (b) Improvements pursuant to the Parks and Open Space Plan; and (c) Required Improvements.

**“Developer Fiscal Year”** is defined in the DDA.

**“Developer Installment Payments Paid”** means the total amount of the Installment Payments (principal plus interest at the Interest Rate, as set forth in the Conveyance Agreement) paid by Developer to Authority prior to termination of the DDA.

**“Developer Maintenance Payment”** means the payment made by Developer to pay for Ongoing Park Maintenance, subject to the limitations set forth in Section 2.7(d).

**“Development Costs”** means all Hard Costs, Soft Costs, and Pre-Development Costs, except to the extent specifically excluded under the Conveyance Agreement and specifically excluding any costs, fees or charges related to debt financing that are not also Permissible Financing Costs.

**“Encumbered Parcels”** is defined in Section 3.7(a)(i).

**“Entitlement”** is defined in the Conveyance Agreement.

**“Estimated Maintenance Cost”** means the estimated costs of the Ongoing Park Maintenance for a Maintenance Period, as determined pursuant to Section 2.7(a).

**“Event of Default”** is defined in the DDA.

**“Excess Land Appreciation Structure”** is defined in the Conveyance Agreement.

**“Exempt Parcel”** means the Public Property. Exempt Parcel does not include an assessor’s parcel that, immediately prior to the acquisition by Authority or other Governmental Entity, was a Taxable Parcel that Authority, City, or any other Governmental Entity acquires by gift, devise, negotiated transaction, or foreclosure (including by way of credit bidding), or an assessor’s parcel that, immediately prior to the acquisition by Authority, was a Taxable Parcel that Authority acquires under its right of reverter under the DDA.

**“Final Conveyance Agreement IRR”** is defined in Section 1.3(e)(i).

**“Final Conveyance Agreement IRR Statement”** is defined in Section 1.3(e)(i).

**“Final IRR”** is defined in Section 1.3(f).

**“Final IRR Statement”** is defined in Section 1.3(f).

**“Financial Obligations”** is defined in the DDA.

**“Financing Plan”** means this Financing Plan.

**“First Tier Compensation”** is defined in Section 1.3(c)(ii).

**“First Tier Payment”** is defined in Section 1.3(c)(ii).

**“First Tranche”** means, calculated separately for each CFD, one or more series of CFD Bonds (including refunding bonds) secured by the levy of Project Special Taxes in such CFD, the proceeds of which City is obligated under this Financing Plan to use to finance Qualified Project Costs.

**“Fiscal Agent”** means the fiscal agent or trustee under an Indenture.

**“Fiscal Year”** means the period commencing on July 1 of any year and ending on the following June 30.

**“FOST Parcel”** is defined in the Conveyance Agreement.

**“Funding Goals”** is defined in Section 1.1(a).

**“Funding Sources”** is defined in Section 1.2(a).

**“Future Sea Level Rise Improvements”** is defined in Section 2.8(e).

**“GAAP”** means generally accepted accounting principals.

**“Governmental Entity”** is defined in the DDA.

**“Gross Revenues”** means, for any period, all cash revenues received by Developer from any source whatsoever, and whether collected through or outside of escrow in connection with all or any part of the Project, in each case for such period, which shall include, the gross proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to Developer as the master landlord under any ground lease or as a property manager under an interim management agreement with Authority for existing facilities and open space, including any of Authority's revenues assigned to Developer pursuant to the DDA (which assignment may exclude revenues of Authority that are used to pay for Authority's costs and expenses that are not included in Authority Cost Payment pursuant to the DDA); proceeds from the first sale of ground leases or refinancing intended to capitalize ground value; any damage recoveries, insurance payments or condemnation proceeds payable to Developer with respect to the Project to the

extent not otherwise used for repair or reconstruction of the Property, all revenues derived from agreements to which Developer is a party pursuant to which Developer participates in the proceeds of the operation or sale of any portion of the Property sold to a Vertical Builder, amounts paid to Developer from the proceeds of any assessment or special tax districts formed for purposes of providing funds for costs associated with the Project, and amounts paid to Developer from tax increment financing or other public financing, and grants and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross Revenues shall specifically exclude the proceeds of any capital contributed to Developer by its partners or members or the proceeds of any loan made to Developer. Gross Revenues includes Net Interim Lease Revenues to the extent provided in Section 6.1(a)(iii).

“**Hard Costs**” is defined in the Conveyance Agreement.

“**High IRR Period**” means the time period (i) commencing on the date that an IRR Statement shows that Developer has achieved a cumulative IRR in excess of 15% as of the end of the final Quarter of the applicable Reporting Period considering all First Tier Payments, Second Tier Payments and Authority Second Tier Payments and (ii) ending on the date that a subsequent IRR Statement shows that Developer’s cumulative IRR as of the end of the final Quarter of the applicable Reporting Period, considering all First Tier Payments, Second Tier Payments and Authority Second Tier Payments, is 15% or below.

“**Higher IRR Period**” means the time period (i) commencing on the date that an IRR Statement shows that Developer has achieved a cumulative IRR in excess of 25% as of the end of the final Quarter of the applicable Reporting Period considering all First Tier Payments, Second Tier Payments and Authority Second Tier Payments and (ii) ending on the date that a subsequent IRR Statement shows that Developer’s cumulative IRR as of the end of the final Quarter of the applicable Reporting Period, considering all First Tier Payments, Second Tier Payments and Authority Second Tier Payments, is 25% or below.

“**Housing Amounts**” means the amounts transferred to Authority for purposes of paying the Housing Costs under Section 3.6.

“**Housing Costs**” means the costs incurred by Authority to increase, improve, and preserve the City’s supply of housing for persons and families of very low-, low-, or moderate-income pursuant to the Housing Plan.

“**Housing Fund**” means a fund created by Authority for holding the Housing Amounts and applying such Housing Amounts on Housing Costs.

“**Housing Percentage**” means, for each IFD, 17.5%, calculated by dividing \$0.10 of Increment by \$0.57 of Increment, rounded to one decimal place (i.e.,  $\$0.10 \div \$0.57 = 17.5\%$ ).

“**Housing Plan**” is defined in the DDA.

“**IFD**” means (i) an infrastructure financing district formed over all or any part of the Project Site that is established under the IFD Act to finance Qualified Project Costs, or (ii) if authorized



under the IFD Act, a Project Area within an infrastructure financing district formed over all or any part of the Project Site, which Project Area has been designated under the IFD Act to finance Qualified Project Costs.

**“IFD Act”** means the Infrastructure Financing District Act (Gov’t Code § 53395 et seq.), as amended from time to time.

**“IFD Debt”** means any bonded indebtedness that the IFD or other Governmental Entity incurs to finance Qualified Project Costs that is secured by a pledge of Net Available Increment, but not including CFD Bonds.

**“IFD Debt Project Account”** means the funds or accounts, however denominated, held by the Fiscal Agent under an Indenture containing the Net IFD Proceeds to be used to finance Qualified Project Costs.

**“IFD Proceeds”** means, in any Fiscal Year, the cumulative amount of (i) the proceeds of IFD Debt and (ii) the Net Available Increment generated in such Fiscal Year that is not used to (A) pay debt service on any IFD Debt and (B) repay the City for any Conditional City Increment used to pay IFD Debt in the manner set forth in Section 3.5(d) and to the extent set forth in Section 3.3(e).

**“IFP”** means an infrastructure financing plan required for each IFD under the IFD Act.

**“Improvement Area”** means an improvement area within a community facilities district designated pursuant to section 53350 of the CFD Act.

**“Improvements”** is defined in the DDA.

**“Inclusionary Unit”** is defined in the Housing Plan.

**“Increment”** means, within an IFD, the tax increment revenues generated from the property within such IFD from and after the base year established for such IFD.

**“Indenture”** means one or more indentures, trust agreements, fiscal agent agreements, financing agreements, or other documents containing the terms of any indebtedness that is secured by a pledge of and to be paid from Net Available Increment or Project Special Taxes.

**“Index”** is defined in the DDA.

**“Infrastructure”** is defined in the DDA.

**“Infrastructure Plan”** is defined in the DDA.

**“Initial Closing”** means the date on which the first conveyance of the FOST Parcel by Quitclaim Deed from the Navy to Authority occurs in accordance with Article 3 of the Conveyance Agreement.

**“Initial Consideration Term”** means a term of ten (10) years (as such term may be extended pursuant to Section 4.2.2 of the Conveyance Agreement).

**“Initial Major Phase”** is defined in the DDA.

**“Initial Major Phase Application”** is defined in the DDA.

**“Initial Navy Consideration”** means the initial consideration to the Navy for acquisition of the Project Site, including the principal amount of \$55 million and all interest payable to the Navy on the unpaid principal amount.

**“Installment Payment”** is defined in the Conveyance Agreement.

**“Interagency Cooperation Agreement”** means that certain Interagency Cooperation Agreement, by and between the City and Authority, as amended from time to time.

**“Interest Rate”** means an annual interest rate of \_\_\_\_\_%, which equals the interest rate payable on ten year (10) Treasury Notes in effect as of the month that the Conveyance Agreement is entered into plus one hundred fifty basis points (150 bps), which Interest Rate will be locked for the duration of the Conveyance Agreement

**“Interim Lease Revenues”** means all cash, notes, or other monetary consideration of any kind paid to the Authority under the Interim Leases.

**“Interim Leases”** means leases under which Authority is the lessor encumbering land in the Project Site during the time such land is leased to or owned by Authority.

**“IRR”** means the internal rate of return, annualized, calculated on the Project’s Net Cash Flow by the Excel 2007 “IRR” function using quarterly Net Cash Flows. The Project’s Net Cash Flow shall be adjusted to show all costs incurred in the quarter paid and all revenues in the quarter received, provided that Pre-Development Costs are applied as of the Initial Closing. An example of the IRR calculation is attached to the Conveyance Agreement as Exhibit DD.

**“IRR Statement”** is defined in Section 1.3(b).

**“Island Wide Costs”** shall mean the Qualified Project Costs that benefit the Project Site as a whole; for illustration purposes, the categories of Qualified Project Costs that the parties anticipate will constitute Island Wide Costs (further due diligence is required before it will be possible to precisely define Qualified Project Costs; the parties have agreed in Section 3.8(e) to define the categories of Qualified Project Costs that constitute Island Wide Costs) are listed in Attachment B hereto.

**“Liquidated Pre-Agreement Costs”** is defined in Section 3.8(c)(ii).

**“Lot”** is defined in the DDA.

**“Maintenance Account Balance”** is defined in Section 2.7(e).

**“Maintenance Budget”** is defined in Section 2.7(b).

**“Maintenance Commencement Date”** means the date that the first park owned by the Authority is completed and open to the public.

**“Maintenance Default”** is defined in Section 2.7(f).

**“Maintenance Period”** means, in each year, the one-year period commencing July 1 and ending on June 30.

**“Major Phase”** is defined in the DDA.

**“Major Phase Approval”** is defined in the DDA.

**“Marina Revenues”** is defined in the DDA.

**“Market Rate Lots”** is defined in the Conveyance Agreement.

**“Market Rate Unit”** is defined in the Housing Plan.

**“Material Breach”** is defined in the DDA.

**“Maximum Annual Developer Contribution”** is defined in Section 2.7(d).

**“Maximum Project Special Tax Rate”** is defined in Section 2.3(g).

**“Navy”** is defined in the DDA.

**“Navy Payment Escrow”** means an escrow created by Authority to hold Interim Lease Revenues to be used solely to pay Installment Payments (principal plus interest at the Interest Rate).

**“Navy Promissory Note”** is described in Section 4.2.6 of the Conveyance Agreement.

**“Net Available Increment”** means, for each IFD, the amount allocated on an unconditional basis to such IFD, which shall be the greater of (i) \$0.57 of every dollar of Increment (which amount will come from Increment that would have otherwise been allocated to City), and (ii) \$0.57 of every dollar of Increment (which amount will come from Increment that would have otherwise been allocated to City) plus any additional amounts of Increment allocated to such IFD in the applicable IFP. Net Available Increment does not include Conditional City Increment.

**“Net Cash Flow”** means Gross Revenues received by the Developer from the Project less Development Costs paid by the Developer.

**“Net CFD Proceeds”** means the proceeds of CFD Bonds that are available or used to pay for Qualified Project Costs directly or by reimbursements to Developer and, when authorized pursuant to Section 2.8, to pay for the costs of Additional Community Facilities.

**“Net IFD Proceeds”** means the proceeds of IFD Debt that are available or used to pay for Qualified Project Costs directly or by reimbursements to Developer.

**“Net Interim Lease Revenues”** is defined in Section 6.1(a)(iv).

**“Net Sale Proceeds”** means the proceeds from the sale of Unconveyed Property by Authority, less the costs of the Authority associated with the marketing and sale of such Unconveyed Property.

**“Non-Developer Property”** means, collectively, the property in the Project Site (i) that was never acquired by the Developer from Authority or (ii) that was reacquired by Authority through reverter.

**“Official Records”** is defined in the DDA.

**“Ongoing Maintenance Account”** means a separate account created by Authority and maintained by Authority to hold all Remainder Taxes transferred from the Remainder Taxes Holding Account pursuant to Section 2.7 to be used for financing Ongoing Park Maintenance during the applicable Maintenance Period.

**“Ongoing Park Maintenance”** means the costs of operating and maintaining Improvements constructed pursuant to the Parks and Open Space Plan within the Project Site, including installing landscaping, all personnel or third-party maintenance costs, costs of maintaining irrigation systems and other equipment directly related to maintenance, maintenance or replacement as needed of landscape areas, water features, bathrooms, trash receptacles, park benches, planting containers, picnic tables, and other equipment or fixtures installed in areas to be maintained, insurance costs, and any other related overhead costs, along with Authority personnel, administrative, and overhead costs related to maintenance or to contracting for and managing third-party maintenance.

**“Other Developer”** is defined in Section 1.4(a)(i).

**“Other Taxing Agencies”** means governmental taxing agencies or other entities that receive Increment and are authorized by the IFD Act or such other law to allocate or subordinate increment to an IFD.

**“Parks and Open Space Plan”** is defined in the DDA.

**“Payment Request”** is defined in the Acquisition and Reimbursement Agreement.

**“Permissible Financing Cost”** is defined in the Conveyance Agreement.

**“Person”** is defined in the DDA.

**“Pre-Development Costs”** is defined in the Conveyance Agreement.

**“Principal Payment Date”** means, (i) if CFD Bonds have not yet been issued for a CFD, September 1 of each year, and (ii) if CFD Bonds have been issued for a CFD, the calendar date on which principal or sinking fund payments on such CFD Bonds are, in any year, payable (for example, if the principal amount of CFD Bonds are payable on September 1, the Principal Payment Date shall be September 1, regardless of whether principal payments are actually due in any particular year).

**“Project”** is defined in the DDA.

**“Project Account”** is defined in Section 1.1(c)(i).

**“Project Area”** means a separately designated project area within the boundaries of an IFD, as permitted by the IFD Act.

**“Project Costs”** means, without duplication: (a) Development Costs; (b) Initial Navy Consideration; (c) Pre-Development Costs; and (d) any other amounts specifically identified in the DDA as a Project Cost.

**“Project Grants”** means State and federal funding.

**“Project Site”** is defined in the DDA.

**“Project Special Taxes”** means special taxes authorized to be levied in a CFD under the CFD Act, including all delinquent Project Special Taxes collected at any time by payment or through foreclosure proceeds.

**“Promissory Note”** is defined in the Conveyance Agreement.

**“Public Financing”** means, individually or collectively as the context requires, CFD Bonds, IFD Debt, and Alternative Financing.

**“Public Property”** is defined in the DDA.

**“Qualified”** when used in reference to Project Costs, Pre-Development Costs, and other capital public facility costs, means: (a) with respect to a CFD, the Project Costs, the Pre-Development Costs (excluding any return on such Pre-Development Costs), and other authorized capital public facility costs, each to the extent authorized to be financed under the CFD Act, Tax Laws (if applicable), and this Financing Plan; (b) with respect to financing from Net Available Increment or IFD Debt, the Project Costs and the Pre-Development Costs (excluding any return on such Pre-Development Costs), each to the extent authorized to be financed under the IFD Act, Tax Laws (if applicable), and this Financing Plan; (c) with respect to an Alternative Financing, the Project Costs and the Pre-Development Costs (excluding any return on such Pre-Development Costs), each to the extent authorized to be financed under the laws governing the Alternative Financing, Tax Laws (if applicable), and this Financing Plan; (d) with respect to Project Grants,

the Project Costs, the Pre-Development Costs (excluding any return on such Pre-Development Costs), and other authorized capital public facility costs, each to the extent authorized to be financed under the terms of the Project Grant and this Financing Plan; and (e) with respect to Net Interim Lease Revenues, the Project Costs not including any Pre-Development Costs.

**“Quarter”** means a three-month period commencing on the first day of the Initial Closing and continuing until the Termination Date of the Conveyance Agreement.

**“Reasonableness Determination”** is defined in the DDA.

**“Reassessment”** is defined in Section 3.7(a)(i).

**“Records”** is defined in Section 1.6(b).

**“Redesign Costs”** means the anticipated costs necessary to prepare, entitle and implement the Redesign Plan.

**“Redesign Plan”** means an Authority plan to re-entitle, redesign and rebuild portions of the Project.

**“Reference Date”** is defined in the DDA.

**“Remainder Taxes”** means, in each year, as of the day following the Principal Payment Date for a CFD, all Project Special Taxes collected prior to such date in such CFD in excess of the total of: (a) debt service on the outstanding CFD Bonds for the applicable CFD due in the current calendar year, if any; (b) priority and any other reasonable administrative costs for the applicable CFD payable in that Fiscal Year; and (c) amounts levied to replenish the applicable reserve fund as of the Principal Payment Date, including amounts reserved for reasonable anticipated delinquencies, if any.

**“Remainder Taxes Holding Account”** is a separate single account created by Authority to hold and apply all transfers of Remainder Taxes pursuant to Section 2.7.

**“Remainder Taxes Project Account”** is a separate account created by City for each CFD and maintained by City to hold all Remainder Taxes for the corresponding CFD to be used for financing Ongoing Park Maintenance, Qualified Project Costs or Additional Community Facilities in the manner set forth in this Financing Plan.

**“Reporting Period”** is defined in Section 1.3(b).

**“RMA”** means the rate and method of apportionment of Project Special Taxes for a CFD, adopted in accordance with applicable law.

**“Schedule of Performance”** is defined in the DDA.

**“Second Tier Participation”** means the consideration paid to the Navy equal to 35% of Net Cash Flow generated by the Project in excess of a Developer 22.5% IRR.

**“Second Tier Payment”** is defined in Section 1.3(c)(iii).

**“Second Tranche”** means, calculated separately for each CFD, one or more series of CFD Bonds secured by the levy of Project Special Taxes in such CFD to be used by City to finance Additional Community Facilities or for any other purpose authorized by the CFD Act.

**“Selected Default”** means an Event of Default under sections 16.2.1(a) and 16.2.3(d) of the DDA.

**“Soft Costs”** is defined in the Conveyance Agreement.

**“Special Tax Requirement”** is defined in Section 2.3(i).

**“State”** is defined in the DDA.

**“Statement of Indebtedness”** means the report City will file for each Fiscal Year to properly allocate the Increment, whether or not required by the IFD ACT.

**“Subordinated Pledge”** is defined in Section 3.4(a).

**“Subordination Request”** means a set of documents that include (i) a written request to Other Taxing Agencies to subordinate the receipt of such Other Taxing Agencies’ tax revenues to the payment of debt service on any IFD Debt secured by Net Available Increment, and (ii) calculations, explanations, and other substantial evidence showing that the tax revenues expected from the property in the IFD are expected to be available to pay both the debt service on the IFD Debt and the payments to the Other Taxing Agencies.

**“Sub-Phase”** is defined in the DDA.

**“Sub-Phase Approval”** is defined in the DDA.

**“Subsequent Owner Property”** means any Undeveloped Property within a CFD owned by a Person other than Developer.

**“Tax Laws”** means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Internal Revenue Code.

**“Taxable Parcel”** means an assessor’s parcel of real property or other assessor’s parcel of property (e.g., a condominium parcel) within a CFD that is not an Exempt Parcel.

**“Taxable Residential Unit”** means: (a) Market Rate Units; and (b) Inclusionary Units.

**“Term”** is defined in the Conveyance Agreement.

**“Termination Date”** is defined in the Conveyance Agreement.

**“Termination Notice”** means a written notice from the Authority providing notice that the DDA has been terminated with respect to the Developer for a portion of the Project Site.

**“Termination Proceeds”** is defined in Section 3.8(c)(ii).

**“Tidelands Trust”** is defined in the \_\_\_\_\_.

**“Total Installment Payments”** means the amount of \$\_\_\_\_\_, which is the total amount of the Installment Payments payable under the Conveyance Agreement (principal plus interest at the Interest Rate).

**“Total Tax Obligation”** means, with respect to a Taxable Residential Unit at the time of calculation, the sum of: (a) the ad valorem taxes actually levied or projected to be levied if the Taxable Residential Unit were developed at the time of calculation; (b) the Assigned Project Special Tax Rates levied or projected to be levied if the Taxable Residential Unit were developed at the time of calculation; (c) all installments of special assessments if the Taxable Residential Unit were developed at the time of calculation; and (d) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the Taxable Residential Unit levied or projected to be levied if the Taxable Residential Unit were developed at the time of calculation.

**“Transferee”** is defined in the DDA.

**“2% Limitation”** is defined in Section 2.3(e).

**“Unconveyed Property”** is defined in Section 6.3(a).

**“Underwriter”** is defined in Section 4.4(b)(v).

**“Underwriter Force Majeure”** is defined in Section 4.4(b)(v).

**“Undeveloped Property”** means, in any Fiscal Year, Taxable Parcels in a CFD that are not Developed Property.

**“Vertical Builder”** is defined in the Conveyance Agreement.

**“Vertical Developer”** is defined in the DDA.

**“Work Program”** a work program for a Redesign Plan submitted by Authority to the Navy.



**Attachment A**

**Form of Acquisition and Reimbursement Agreement**

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**ACQUISITION AND REIMBURSEMENT AGREEMENT  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

**by and among**

**CITY AND COUNTY OF SAN FRANCISCO,**  
a public body, corporate and politic, of the State of California,

**TREASURE ISLAND DEVELOPMENT AUTHORITY,**

a California non-profit public benefit corporation,

**and**

**TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC,**  
a California limited liability company

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## **LIST OF EXHIBITS**

- |             |  |
|-------------|--|
| Exhibit A   | Description of Acquisition Facilities and Authorized Payments to Be Financed for the Project                     |
| Exhibit B   | Description of Acquisition Facilities and Components with Cost Estimates, and Authorized Payments and Components |
| Exhibit C   | Form of Payment Request – Acquisition Facilities and Components  |
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| Exhibit C-2 | Calculation of Actual Cost   |
| Exhibit D   | Form of Payment Request – Authorized Payments  |

## ACQUISITION AND REIMBURSEMENT AGREEMENT (TREASURE ISLAND/YERBA BUENA ISLAND)

This ACQUISITION AND REIMBURSEMENT AGREEMENT (including any Supplement, this “**Agreement**”), dated for reference purposes only as of \_\_\_\_\_, is by and among City, Authority, and Developer. As used in this Agreement, capitalized terms used herein have the meanings given to them in Article 9. Capitalized terms used but not otherwise defined in this Agreement have the definitions given to them in the DDA.

### RECITALS

A. Financing Plan; Interagency Cooperation Agreement. The Authority and Developer have entered into the DDA, and City and Developer have entered into the City DA, both of which includes the Financing Plan as attachments thereto, to establish the contractual framework for mutual cooperation in achieving the Funding Goals necessary to implement the Project. With Developer’s consent, the City and the Authority have entered into the Interagency Cooperation Agreement, under which, among other things, the Authority delegates to the City, and the City accepts, lead responsibility for certain actions necessary for the development of the Project.

B. Purpose of this Agreement. This Agreement describes the procedures by which, at Developer’s request, the City will: (1) inspect and accept Infrastructure and other Improvements that Developer constructs under the DDA and the City DA; (2) subject to Section 4.4(a), pay Developer for Actual Costs of the Acquisition Facilities and Components from available Funding Sources; and (3) pay Developer for Authorized Payments from available Funding Sources.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, City, and Authority hereby agree as follows:

#### ARTICLE 1 FUNDING

1.1 Use of Funding Sources. This Agreement: (a) implements and is subject to all limitations of the DDA, the City DA, and the Financing Plan; (b) will become effective on the later to occur of: (i) the date the DDA and City DA become effective; or (ii) the full execution and delivery of this Agreement (the “**Effective Date**”); and (c) describes the procedures by which, at Developer’s request, the City will use available Funding Sources to make payments to Developer for the Actual Costs (or such lesser amount required by Section 4.4(a)) of the Acquisition Facilities and Components and for Authorized Payments, each as contemplated in the Financing Plan. To the extent set forth in an Assignment and Assumption Agreement, Developer will mean a Transferee.

1.2 Supplements to Exhibit A. The Parties intend Exhibit A to be a complete list of all items eligible and intended to be financed by Funding Sources under the Financing Plan. Exhibit A sets forth: (a) reasonably detailed descriptions of all of the Acquisition Facilities; and (b) all Authorized Payments. At any time, Developer may submit proposed

Supplements to Exhibit A for review in accordance with Section 1.4 that describe in reasonable detail any proposed revisions or additions to the Acquisition Facilities or Authorized Payments.

1.3 Supplements to Exhibit B. The Parties intend Exhibit B to be a refinement of Exhibit A as the Parties obtain more information about the Acquisition Facilities and Authorized Payments, and the Actual Costs that are to be reimbursed under this Agreement. At any time, Developer may submit proposed Supplements to Exhibit B for review in accordance with Section 1.4 that: (a) describe and provide detail on any portion of the Acquisition Facilities set forth on Exhibit A, including the identification and detail of any Components thereof; (b) provide estimates of the Actual Costs of any portion of the Acquisition Facilities set forth on Exhibit A, including of any Components thereof; (c) update the amounts of any Authorized Payments; and (d) otherwise update or modify any other information in Exhibit B. The Parties agree that the City will not be obligated to pay Developer for the Actual Costs (or such lesser amount required by Section 4.4(a)) of an Acquisition Facility or a Component or for an Authorized Payment under this Agreement unless such Acquisition Facility or Component and its estimated Actual Cost or Authorized Payment is set forth on Exhibit B.

1.4 Review and Approval of Supplements. Under the Interagency Cooperation Agreement, the Department of Public Works will be the lead City agency to facilitate coordinated review of Project Applications and will assist the City as provided under this Agreement. Except as specifically provided otherwise in this Agreement or the Interagency Cooperation Agreement: (a) the Department of Public Works will be the lead City agency responsible for review of Developer's estimated Actual Costs and of any changes to its estimates of Actual Costs of Acquisition Facilities and Components contained in any Supplements submitted under this Agreement, and the Authority will be the lead agency responsible for review and approval of Supplements relating to Authorized Payments under this Agreement (as applicable, the "**Reviewing Party**"), subject to the following:

(a) Upon Developer's written request, the Reviewing Party will meet with representatives of Developer to establish acceptable contents of any Supplements to Exhibit A or Exhibit B. The Reviewing Party will have thirty (30) days after receipt of a proposed Supplement submitted with Developer's written request for review and approval to accept or object in writing to all or any portion of the proposed Supplement. Developer may resubmit any proposed Supplement to which the Reviewing Party has timely objected, and the Reviewing Party will have thirty (30) days to review any resubmitted proposed Supplement. The term "**Supplement Review Period**" as used later in this Agreement will mean the applicable period specified above in this Section 1.4(a). If the Reviewing Party fails to notify Developer that a Supplement is disapproved within the Supplement Review Period, then the Supplement will be Deemed Approved.

(b) The Reviewing Party will only be required to review a proposed Supplement after it is complete and contains all of the information set forth in Section 1.2 or Section 1.3, as applicable, and any supporting materials reasonably requested in writing by the Reviewing Party in connection with the proposed Supplement. The Supplement Review Period will be tolled: (i) as to a Supplement for which the Reviewing Party has requested additional information or materials, until such requested information or materials have been provided to the Reviewing Party; and (ii) as to any additional Supplement proposed by Developer during any

Supplement Review Period, until any previously-submitted Supplement has been reviewed and approved, timely objected to or Deemed Approved, unless the Parties agree to a different order of priority for the Reviewing Party's review. Within the Supplement Review Period, as it may be tolled under this Section 1.4(b), the Reviewing Party will send a notice of Approval or disapproval to Developer. Any notice of disapproval must state with specificity the Reviewing Party's grounds for disapproval, which must be made in good faith and will be limited to the following:

(i) For disapproval of a proposed Supplement to Exhibit A:  
(A) a proposed Acquisition Facility or Authorized Payment is not contemplated to be financed by the DDA or City DA; or (B) a proposed Acquisition Facility or Authorized Payment may not be financed under the Governing Acts, the DDA, or the City DA.

(ii) For disapproval of a proposed Supplement to Exhibit B:  
(A) the specified Acquisition Facilities or Authorized Payments are not listed on Exhibit A;  
(B) specified Components are not components of the Acquisition Facilities listed on Exhibit A;  
or (C) for an Acquisition Facility with an estimated Actual Cost of one million dollars (\$1,000,000) or less, a proposed Component is not a complete, functional portion of an Acquisition Facility.

(c) Any proposed Supplement Approved or Deemed Approved in accordance with this Section 1.4 will be made a part of Exhibit A or Exhibit B, as applicable, without further approval of the City or the Authority.

#### 1.5 Funding Sources.

(a) The City will not be obligated to pay all or any part of the Actual Cost of an Acquisition Facility or Component, or all or any part of any Authorized Payment, under this Agreement except from Funding Sources. The City will have no liability to pay all or any part of the Actual Cost of an Acquisition Facility or Component, or all or any part of any Authorized Payment, if the Acquisition Facility, Component, or Authorized Payment is determined to be ineligible to be financed under the Governing Acts, even if the City or the Department of Public Works did not object to the Exhibit or Supplement listing it on the grounds of ineligibility.

(b) Developer acknowledges that if the City and Developer agree to issue escrow bonds as part of a Public Financing and funds are deposited in an escrow fund, escrowed amounts will become Funding Sources: (i) only after release from the escrow fund and satisfaction of all escrow requirements; and (ii) in the amounts specified in the applicable Indenture. The City agrees to take all reasonable actions necessary to cause the release of funds from an escrow fund after all conditions for their release have been satisfied.

(c) The City makes no warranty, express or implied, that Funding Sources will be sufficient to pay for all of the Acquisition Facilities, Components, and Authorized Payments.

#### 1.6 Deposits of Funding Sources.



(a) The proceeds of any Public Financing will be deposited, held, invested, reinvested, and disbursed as provided in the respective Indenture, all in a manner consistent with the Financing Plan and this Agreement. The portion of the proceeds of each Public Financing that is used to fund reserves for debt service, to capitalize interest on the Public Financing, and to pay costs of issuance and administration will not constitute Funding Sources.

(b) Pursuant to the Financing Plan, under certain circumstances, a portion of Remainder Taxes generated from a CFD may be deposited and held in, and invested, reinvested, and disbursed from the applicable Remainder Taxes Project Account. Developer acknowledges that without the consent of the City, any Remainder Taxes for a CFD deposited in the CFD's Remainder Taxes Project Account will not be available to pay the Actual Costs of Acquisition Facilities or Components or Authorized Payments under this Agreement after the CFD Conversion Date for such CFD.

(c) All Net Available Increment will be held by the City in one or more accounts created by the City and disbursed as set forth in the Financing Plan.

(d) Developer agrees that the City alone will direct the investment of Funding Sources in accordance with the City's investment policy and all applicable laws and the applicable Indenture. The City will have no responsibility to Developer with respect to any investment of Funding Sources before their use under this Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment so long as the investments were made in accordance with all applicable laws and the applicable Indenture, even if a loss diminishes the amount of available Funding Sources.

#### 1.7 Payment of Certain Costs.

(a) Subject to any limitations imposed by the Financing Plan, the City and Authority agree that the City shall reimburse Developer for the Authorized Payments constituting Qualified Pre-Development Costs from the first available Funding Sources until paid in full.

(b) The City and Developer agree that certain professional and consulting costs that Developer incurs in connection with the issuance of Public Financings will be financed with proceeds of the Public Financing to the extent permitted by the applicable Governing Act.

### **ARTICLE 2 CONSTRUCTION OF ACQUISITION FACILITIES**

2.1 Plans. Developer will prepare and obtain approval by each applicable Governmental Entity of all Plans for the Acquisition Facilities in accordance with, and at the times necessary to comply with the provisions of, the DDA and the City DA.

2.2 Obligation to Construct Acquisition Facilities. Developer's obligation to construct the Acquisition Facilities is governed by the DDA and the City DA. This Agreement does not create an obligation to construct any Acquisition Facility or Component. This Article 2

applies only to those Acquisition Facilities and Components for which Developer seeks the payment of the Actual Costs under this Agreement.

### 2.3 Relationship to Public Works Contracting Requirements.

(a) This Agreement provides for the acquisition of the Acquisition Facilities and payment for Components from time to time from Funding Sources. The Parties acknowledge and agree that the Acquisition Facilities and Components are of local, and not state-wide, concern, and that the provisions of the California Public Contract Code do not apply to the construction of the Acquisition Facilities and Components. However, Developer agrees to award all contracts for construction of the Acquisition Facilities and Components in a manner consistent with the DDA and the City DA, including as required under the City Policies.

(b) From time to time at the request of the City, representatives of Developer must meet and confer with the City and Department of Public Works staff, consultants, and contractors regarding matters arising under this Agreement with respect to the Acquisition Facilities and any Components, compliance with City bidding requirements, and the progress in constructing and acquiring the same, and as to any other matter related to the Acquisition Facilities or this Agreement. The City and Department of Public Works staff will have the right: (i) to attend (and at the request of Developer will attend) meetings between Developer and its contractors relating to the Acquisition Facilities and Components; and (ii) to meet and confer with individual contractors and Developer if deemed advisable by the City to resolve disputes or ensure the proper completion of the Acquisition Facilities and Components.

### 2.4 Independent Contractor.

(a) In performing under this Agreement, Developer is an independent contractor and not the agent or employee of the City, the Authority, any CFD, or any IFD. Except as otherwise provided in this Agreement, none of the City, the Authority, any CFD, or any IFD will be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of Developer.

(b) The City has determined that it would obtain no advantage by directly undertaking the construction of the Acquisition Facilities, and that the DDA and City DA require that the Acquisition Facilities be constructed by Developer as if they had been constructed under the direction and supervision, or under the authority, of the City, the Authority, and any Governmental Entity that will own or operate the Acquisition Facilities.

## **ARTICLE 3 ACQUISITION AND PAYMENT OF ACQUISITION FACILITIES**

### 3.1 Inspection.

(a) This Article 3 applies only to those Acquisition Facilities and Components for which Developer seeks the payment of Actual Costs under this Agreement. Components may only be financed to the extent allowed under the applicable Governing Act.

(b) Except as set forth in Section 3.3, the City will not be obligated to pay the Actual Costs (or such lesser amount required by Section 4.4(a)) of Acquisition Facilities or Components under this Agreement to Developer until the applicable Acquisition Facility or Component has been inspected as required by the Interagency Cooperation Agreement and found by the Director of Public Works to be completed substantially in conformance with the Plans and otherwise consistent with the DDA and any Applicable City Regulations and ready for its intended use.

(c) For Acquisition Facilities and Components to be acquired by the City or the Authority, the Director of Public Works will arrange for the inspection to commence within five (5) days following receipt of Developer's written request to inspect Acquisition Facilities or Components that Developer believes in good faith are ready for inspection (the "**Inspection Request**"). The inspection of the Acquisition Facilities and Components to be acquired by the City or the Authority will be governed by the procedures developed by the City and Authority that are consistent with the Applicable City Regulations and are Approved by Developer. The inspection will be conducted with due diligence and in a reasonable time given the scope of the inspection but not to exceed twenty-one (21) days. Within five (5) days following the completion of the inspection, the Director of Public Works shall notify Developer of the results of the inspection by providing a written notice that the Acquisition Facility or Component has been Approved as inspected or by providing a punch list of items to be corrected.

3.2 Agreement to Sell and Purchase Acquisition Facilities. Developer agrees to sell Acquisition Facilities and Components to the City, the Authority, or other Governmental Entity(ies), and the City agrees to use Funding Sources to pay the Actual Cost of the Acquisition Facilities and Components to Developer, subject to this Agreement (including, but not limited to, Section 4.4(a)) and the Financing Plan.

### 3.3 Component Financing.

(a) Section 53313.51 of the CFD Act authorizes the purchase of a Component of an Acquisition Facility with an estimated cost of up to one million dollars (\$1,000,000), but only if the Component is capable of serviceable use as determined by the City, Authority, or other Governmental Entity, as applicable. Subject to the availability of Funding Sources, the City agrees to pay to Developer the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Components under this Section 3.3(a) before: (i) completion of the Acquisition Facility of which the Component is a part (unless it is the final Component of an Acquisition Facility); or (ii) the transfer to the City, the Authority, or other Governmental Entity of title to the Acquisition Facility and the property underlying applicable Component. A reasonably detailed description and estimated Actual Cost of each Component to be financed under this Section 3.3(a) must be listed on Exhibit B through an Approved or Deemed Approved Supplement.

(b) If the estimated cost of an Acquisition Facility exceeds one million dollars (\$1,000,000), section 53313.51 of the CFD Act authorizes the purchase of Components whether or not the Components are capable of serviceable use. Subject to the availability of Funding Sources, the City agrees to pay to Developer the Actual Costs (or such lesser amount

required by Section 4.4(a)) of such Components under this Section 3.3(b) before: (i) completion of the Acquisition Facility of which the Component is a part (unless it is the final Component of an Acquisition Facility); or (ii) the transfer to the City, the Authority, or other Governmental Entity of title to the Acquisition Facility and the property underlying the Component. A reasonably detailed description and estimated Actual Cost of each Component to be financed under this Section 3.3(b) must be listed on Exhibit B through an Approved or Deemed Approved Supplement.

(c) Developer acknowledges that the City, the Authority, or other Governmental Entity, as applicable, will not be obligated to accept an Acquisition Facility of which a Component is a part until the entire Acquisition Facility has been constructed and determined to be Complete as required under the DDA and the City DA. The City acknowledges that a Component does not have to be accepted by the City, the Authority, or other Governmental Entity as a condition precedent to the payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of the Component.

(d) The procedures for payment of the Actual Cost of a Component described in this Section 3.3 will be governed by Article 4.

3.4 Defective or Nonconforming Work. If the Director of Public Works finds any of the work done or materials furnished for an Acquisition Facility or Component to be defective or not in conformance with the applicable Plans and the Applicable City Regulations and such finding is made: (a) prior to payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Acquisition Facility or Component, the City may withhold the applicable payment until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works; or (b) after payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Acquisition Facility or Component, then the DDA and City DA will govern cure rights and obligations.

3.5 Conveyance of Land, Title. The transfer of, maintenance of, and right of entry with respect to all land on, in, or over which any of the Acquisition Facilities will be located will be governed by the DDA, the City DA, the Applicable City Regulations, and, as applicable, any Permit to Enter or other access agreement for the land, and the Interagency Cooperation Agreement.

## **ARTICLE 4**

### **PAYMENT REQUESTS FOR ACQUISITION FACILITIES AND COMPONENTS**

#### **4.1 Payment Requests.**

(a) To initiate the process for payment of the Actual Cost of an Acquisition Facility or Component, Developer must deliver to the Director of Public Works a Payment Request in the form of Exhibit C that contains all relevant information, including the identity of all Funding Sources that are eligible to be used to pay it (the “**Identified Funding Sources**”), together with all required attachments and exhibits, all in an organized manner. Required attachments include:

(i) a copy of the Director of Public Works' notice that the Acquisition Facility or Component has been inspected and Approved for payment or, if applicable, written evidence that the applicable Governmental Entity has found the Acquisition Facility or Component acceptable; and

(ii) Proof of Payment evidencing that the Actual Costs were previously incurred and, if applicable, paid, for the Acquisition Facility or Component, except for any Actual Costs to be paid directly to a Third Party at Developer's request.

(b) Any Payment Request for a Component must be supported by the following documentation:

(i) a statement specifying each contractor, subcontractor, materialman, and other Person with whom Developer or its contractor has entered into contracts with respect to any Component included in the Payment Request and, for each of them: (A) the amount of each such contract; and (B) the amount of the requested Actual Cost attributable to each specific contractor, subcontractor, materialman, and other Person; and

(ii) duly executed unconditional or conditional lien releases and waivers (in the applicable form provided in Calif. Civil Code § 3262) from all contractors, subcontractors, materialmen, consultants, and other Persons retained by Developer in connection with the Component, under which each such Person unconditionally or conditionally waives all lien and stop notice rights with respect to the pending payment.

(c) A Payment Request for a Completed Acquisition Facility will be complete only after Developer has submitted all of the following documents, to the extent applicable:

(i) if the real property on which the Acquisition Facility is located is not owned by the City, the Authority, or other Governmental Entity at the time of the request, a copy of the recorded document(s) conveying Acceptable Title to the real property to the City, the Authority, or other Governmental Entity, as applicable;

(ii) a copy of the determination of completeness issued by the Director of Public Works under Section 3.1(c) for the Acquisition Facility or, if applicable, similar evidence that the Governmental Entity has found the Acquisition Facility to be Complete;

(iii) an executed assignment of any warranties and guaranties for the Acquisition Facility, in a form acceptable to the City, the Authority, or other Governmental Entity, as applicable; and

(iv) as-built drawings and an executed assignment of the Plans, to the extent reasonably obtainable.

(d) Developer will specify the “**Developer Allocation**” that is included in the calculation of the Actual Cost in Exhibit C-2 to each Payment Request under this Article 4, showing how Developer has allocated the following costs paid or incurred by Developer (as applicable):

(i) costs that apply to more than one Acquisition Facility or Component (e.g., Soft Costs), as allocated between the Acquisition Facilities or Components;

(ii) costs that apply to both Acquisition Facilities or Components and other improvements (e.g., grading), as allocated between the Acquisition Facilities or Components and the other improvements; and

(iii) amounts paid to the City and the Authority that apply to more than one Acquisition Facility or Component (e.g., inspection fees, Authority Costs, plan review fees, etc.), as allocated between the Acquisition Facilities or Components.

#### 4.2 Processing Payment Requests for Acquisition Facilities and Components.

(a) Within ten (10) days after receipt of any Payment Request, the Director of Public Works will review the Payment Request to: (i) determine that it is complete; or (ii) determine that the Payment Request is incomplete and to request additional information and documentation reasonably necessary for the Director to complete the review. If the Director fails to notify Developer within the 10-day review period that a Payment Request is incomplete, the Payment Request will be deemed complete. Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review.

(b) Within thirty (30) days after the date a Payment Request is determined or deemed to be complete under Section 4.2(a), the Director of Public Works will review the Payment Request to confirm that all conditions in Article 3 and Section 4.1 have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the Payment Request is Approved (which will be confirmed by counter-signing the Payment Request); or (ii) the Payment Request is disapproved in whole or in part, specifying in the notice the portion of the Payment Request that is disapproved and the reason(s) for disapproval. If the Payment Request is disapproved in part, the Director of Public Works will forward the Payment Request to the City for partial payment under Section 4.3, together with a copy of the Director's notice of disapproval to Developer. Developer may resubmit any Payment Request disapproved in whole or in part with additional supporting documentation, and the Director of Public Works will review it within the amount of time that is reasonable in light of the materiality of the reasons for the disapproval, not to exceed fourteen (14) days. If the Director of Public Works fails to notify Developer within the review period that a Payment Request is Approved or disapproved, then the Payment Request will be Deemed Approved.

(c) The period within which the Director of Public Works must review a Payment Request under Section 4.2(a) or Section 4.2(b) will be tolled: (i) as to any Payment Request, until Developer has provided any additional information or documentation that the Director of Public Works has requested under Section 4.2(a) or Section 4.2(b); and (ii) as to any additional Payment Request submitted by Developer during the review period under Section 4.2(a) or Section 4.2(b), until all previously-submitted Payment Requests have been reviewed and approved, disapproved or Deemed Approved, unless the Parties agree to a different order of priority for review by the Director of Public Works.

(d) The process for review of the Payment Requests is subject to Article 6.

#### 4.3 Payment.

(a) Within five (5) days after Approving a Payment Request or after the Deemed Approval of a Payment Request, the Director of Public Works will forward the counter-signed Approved Payment Request to the City. If the Director of Public Works has not forwarded a counter-signed Approved Payment Request within that period, Developer will have the right to deliver the unsigned Payment Request, together with proof of its delivery to the Director of Public Works, directly to the City, with a copy to the Director of Public Works.

(b) The Developer Allocations will be presumed to be reasonable and will be accepted for all purposes of this Agreement unless the City notifies Developer of the City's good-faith objection to the Developer Allocation shown in the Payment Request within five (5) days after the City receives the counter-signed Payment Request from the Director of Public Works or unsigned Payment Request and proof of delivery from Developer. If the City has timely objected to the Developer Allocation, then the City and Developer will promptly meet and confer in an attempt to agree on how to allocate such costs on a reasonable basis (the "**Agreed-Upon Allocation**").

(c) The City must pay the Actual Costs (or such lesser amount required by Section 4.4(a)) to the extent of available Identified Funding Sources within fifteen (15) business days after the City's receipt of a counter-signed Approved Payment Request (or an unsigned Payment Request and proof of delivery). If the City objected to the Developer Allocation under Section 4.3(b), then the City may withhold payment of the Developer Allocation until the City and Developer agree on the Agreed-Upon Allocation, in which case the withheld allocations will be paid by the City to Developer within fifteen (15) business days thereafter. At the written request of Developer, the City will make payments under any Approved or Deemed Approved Payment Requests directly to a Third Party, such as a contractor or supplier of materials.

(d) The City and Developer acknowledge sections 4.4(c), 4.6(a), and 4.6(b) of the Financing Plan as they apply to the relative timing of acceptance of Acquisition Facilities and Components and the payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Acquisition Facilities and Components.

4.4 Restrictions on Payments for Acquisition Facilities and Components. The following restrictions will apply to any payments made to Developer under Section 4.3:

(a) The total amount paid for any Acquisition Facility or Component must not exceed the lesser of the Actual Cost or value. Any Acquisition Facility or Component constructed in accordance with the Plans will be presumed to have a value equal to its Actual Cost unless either Developer or the City provides evidence that extraordinary costs have been incurred. Promptly following the notice, the City and Developer will meet and confer to review the Actual Costs and make a reasonable determination of value. The Parties acknowledge and agree that all payments to Developer for the Actual Costs are intended to be payments to

Developer for monies already expended or for immediate payment by Developer (or directly by the City) to Third Parties. Costs will not constitute extraordinary costs unless the City can demonstrate that the costs are commercially unreasonable under the circumstances.

(b) The City will withhold final payment for any Completed Acquisition Facility (but not for any Component that is not the final Component of an Acquisition Facility) constructed in, on, or over land, until Acceptable Title to such land has been conveyed to the City, the Authority, or other Governmental Entity, if required under Section 4.1(c).

(c) The City may withhold final payment for any Completed Acquisition Facility (if it has no Components) or the final Component of any Completed Acquisition Facility until: (i) the Completed Acquisition Facility has been finally inspected as provided in Section 3.1; (ii) the Acceptance Date for the Acquisition Facility has occurred and the requirements of Section 4.1 have been satisfied to the extent applicable, or Developer has provided the Director of Public Works with evidence that the Governmental Entity has accepted dedication of and title to the Acquisition Facility; and (iii) general lien releases for the Acquisition Facility (conditioned solely upon payment from Funding Sources to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works.

(d) Nothing in this Agreement prohibits Developer from contesting in good faith the validity or amount of any mechanics' or materialman's lien or limits the remedies available to Developer with respect to such liens so long as any resulting delays do not subject the Acquisition Facilities or any Component to foreclosure, forfeiture, or sale. If Developer contests any such lien, Developer will only be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. In addition, the City agrees that Developer will have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify the City and the City for any losses sustained by the City or the City because of any liens that may exist at the time of acceptance of such an Acquisition Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

(e) The City will be entitled to withhold from the amounts payable under each Payment Request a portion for retention as authorized by City policies and procedures that constitute Applicable City Regulations, but in any case not to exceed ten percent (10%) of the amount of the Actual Cost of an Acquisition Facility or Component. The City will be obligated to release any retention it withholds in accordance with applicable City policies and procedures.

## **ARTICLE 5**

### **PAYMENT REQUESTS FOR AUTHORIZED PAYMENTS**

5.1 Authorized Payments. In order to receive reimbursement of an Authorized Payment, Developer must deliver to the City a Payment Request in the form of Exhibit D that contains all required information and attachments, as applicable, such as:



(a) Identified Funding Sources; (b) Proof of Payment; and (c) for interest-bearing Authorized Payments, a calculation showing the amounts accrued and the outstanding and unpaid balance after the application of any Funding Sources as of the date the Payment Request is submitted (“**Authorized Payment Calculation**”).

## 5.2 Processing Payment Requests for Authorized Payments.

(a) Within ten (10) days after receipt of a Payment Request for an Authorized Payment, the Authority Director will review the Payment Request to confirm that it is complete and the calculations are accurate and notify Developer whether the Payment Request is complete and Approved (which will be confirmed by counter-signing the Payment Request), and, if not, specify the reason(s) for any disapproval. Developer agrees to cooperate with the Authority Director in conducting each such review and to provide the Authority Director with such additional information and documentation as is reasonably necessary for the Authority Director to conclude each such review. If the Payment Request is disapproved, Developer may resubmit it for approval, and the Authority Director will review it within the amount of time that is reasonable in light of the materiality of the reasons for disapproval, not to exceed ten (10) days. If the Authority Director fails to notify Developer that a Payment Request is Approved or disapproved within the review period, then the Payment Request will be Deemed Approved.

(b) The period within which the Authority Director must review a Payment Request under Section 5.2(a) will be tolled: (i) as to any Payment Request, until Developer has provided any additional information or documentation that the Authority Director has requested under Section 5.2(a); and (ii) as to any additional Payment Request submitted by Developer during the review period under Section 5.2(a), until all previously-submitted Payment Requests have been reviewed and approved, disapproved or Deemed Approved, unless the Parties agree to a different order of priority for review by the Authority Director.

(c) The process for review of the Payment Requests for Authorized Payments is subject to Article 6.

## 5.3 Payment.

(a) Within five (5) days after the Approval or Deemed Approval of a Payment Request, the Authority Director will forward the counter-signed Approved Payment Request to the City Finance Deputy. If the Authority Director has not forwarded the counter-signed Approved Payment Request within five (5) days after Approving the Payment Request, or it is Deemed Approved pursuant to Section 5.2(a), Developer will have the right to forward the unsigned Payment Request, together with proof of its delivery to the Authority Director, directly to the City Finance Deputy, with a copy to the Authority Director. The City Finance Deputy must pay the Approved or Deemed Approved Payment Request from available Identified Funding Sources within fifteen (15) business days after receipt of a counter-signed Approved Payment Request (or an unsigned Payment Request and proof of delivery).

# **ARTICLE 6 PAYMENT REQUESTS GENERALLY; VESTING; COVENANTS**

6.1 Application of Payment Requests.

- (a) Each Payment Request will be numbered consecutively. Each Payment Request will be assigned the next available number when submitted to the Director of Public Works or the Authority Director, as applicable, pursuant to Section 4.2 or Section 5.2.
- (b) Each Payment Request will identify the Major Phase and Sub-Phase in which the work is being conducted or to which the Authorized Payment is allocated and all the Identified Funding Sources that are eligible to be used to pay it.
- (c) The City will satisfy a Payment Request only from the Identified Funding Sources.
- (d) The City shall not satisfy a Payment Request out of Net Available Increment if application of Net Available Increment has been suspended in the manner described in section 3.8 and section 3.9 of the Financing Plan, and shall not satisfy a Payment Request out of any Funding Sources during the time under which the circumstances described in Section 4.4(c)(ii) of the Financing Plan are applicable.
- (e) The City and Developer acknowledge that proceeds of Funding Sources may be applied to the payment of a Payment Request only to the extent that the costs of the Acquisition Facility, Component, or Authorized Payment are Qualified.
- (f) Payment Requests may be paid: (i) in any number of installments as Identified Funding Sources become available; and (ii) irrespective of the length of time of such deferral of payment.
- (g) Each Payment Request shall be consistent with section 3.6 of the Financing Plan.

6.2 Partial Payments; Vested Payment Requests. If Identified Funding Sources are not sufficient to pay the full amount of a Payment Request, then the City will pay the Payment Request to the extent of available Identified Funding Sources and notify Developer of the amount of the remaining portion. The right to the payment of the remaining portion of the Payment Request from the Identified Funding Sources will vest in the payee of such Payment Request (the “**Vested Payment Request**”). Promptly following the availability of Identified Funding Sources, the City will, from time to time and in as many installments as necessary, pay any Vested Payment Request. The Vested Payment Request will be paid from such Identified Funding Sources to the payee of such Vested Payment Request in the order in which the Payment Request is numbered, with a Payment Request of a lower number to be satisfied before the Payment Request of a higher number, except during a suspension of the application of Net Available Increment in the manner described in section 3.8 and section 3.9 of the Financing Plan, and except during the time under which the circumstances described in Section 4.4(c)(ii) of the Financing Plan are applicable, which will prevail over this Agreement in determining priorities for payments from Funding Sources. Subject to suspension of the application of Net Available Increment in the manner described in sections 3.8 and 3.9 of the Financing Plan, and except during the time under which the circumstances described in Section 4.4(c)(ii) of the Financing Plan are applicable, outstanding and unpaid Vested Payment Requests will be paid from the

Identified Funding Sources in their relative order of priority under this Section 6.2 before Identified Funding Sources may be used for any other purposes under this Agreement regardless of: (a) the identity of the owner of any property in the Project Site at the time of the payment of the Vested Payment Request; (b) whether the payee under the Vested Payment Request is, at the time of payment, a Party or a party to the DDA or City DA; and (c) whether the DDA or City DA has been terminated or assigned to or assumed by another Person. This Section 6.2 will survive termination of this Agreement, the DDA, and the City DA.

6.3 Deposit of Payment Requests. Except for payments made to Third Parties at Developer's request, all payments made under any Payment Request or Vested Payment Request will be deposited into one or more Project Accounts specified by Developer.

6.4 Alternative Financing. If an Alternative Financing is approved pursuant to the Financing Plan, then the Parties will work together in good faith if necessary to amend this Agreement to allow the proceeds of the Alternative Financing to be used to acquire Acquisition Facilities and Components and to pay Actual Costs and Authorized Payments.

6.5 Miscellaneous.

(a) Communications requesting additional information about and notices of Approval or disapproval of a Supplement or a Payment Request or the insufficiency of Identified Funding Sources to pay an Approved or Deemed Approved Payment Request in full may be made in any written form for which receipt may be confirmed, including facsimile, electronic mail, and certified first class mail, return receipt requested. Such communications will be effective upon receipt, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day.

(b) All proposed Supplements and Payment Requests submitted to the City must be sent by certified first class mail - return receipt requested, personal delivery, or receipted overnight delivery. Payment Requests must be clearly marked: "Payment Request No. \_\_\_\_\_; Treasure Island/Yerba Buena Island; Attn: Executive Director" Delivery of a Supplement or Payment Request to the City will be effective on the actual date of delivery, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day. Copies of Payment Requests must be delivered in the same manner as the original.

(c) Except as provided in this Agreement, the City agrees that it will not withhold payment on any undisputed portion of a Payment Request, and that the City will be entitled to withhold payment only on a disputed portion of a Payment Request.

(d) In connection with processing any request under this Agreement (including Payment Requests and Supplements), the City and the Director of Public Works agree that any additional information request by the City or the Director of Public Works to Developer must be submitted as soon as practicable following the submission of the original materials, but in any event prior to applicable deadlines required by this Agreement. The City and the Director of Public Works will use their respective good faith efforts to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response

to each request. Developer is authorized to communicate directly with the City, the Director of Public Works, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of Developer. Developer represents and warrants to and for the benefit of the City that:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of California, is in compliance with the laws of such state, and has the power and authority to own its properties and assets and to carry on its business as now being conducted.

(b) Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by Developer.

7.2 Representations and Warranties of the City. The City represents and warrants to and for the benefit of Developer that:

(a) The City is a duly formed corporate body under the Constitution and the laws of the State of California, is in compliance with the Constitution and the laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted.

(b) The City has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the City.

7.3 Representations and Warranties of the Authority. The Authority represents and warrants to and for the benefit of Developer that:

(a) The Authority is a California non-profit public benefit corporation, is in compliance with the laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted.

(b) The Authority has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Authority.

## **ARTICLE 8 MISCELLANEOUS**

8.1 Limited Liability of the City and the City. Except as otherwise provided in the DDA and the City DA, Developer agrees that any and all obligations of the City or the Authority arising out of or related to this Agreement are special and limited obligations of the City and the Authority, as applicable, and the City's and Authority's obligations to make any payments under this Agreement to implement the Financing Plan are restricted entirely to available Funding Sources as provided in the Financing Plan and from no other source. No member of the Board of Supervisors, the Authority Board, or City or Authority staff member or employee will incur any liability under this Agreement to Developer in their individual capacities by reason of their actions under this Agreement or execution of this Agreement. It is understood and agreed that no commissioners, members, officers, or employees of the City or the Authority (or of either of its successors or assigns) will be personally liable to Developer, nor will any officers, directors, shareholders, agents, or employees of Developer (or of its successors or assigns) be personally liable to the City or the Authority in the event of any default or breach of this Agreement by the City or Developer or for any amount that may become due to Developer or the City or the Authority, as the case may be, under this Agreement or for any obligations of the Parties under this Agreement.

8.2 Attorneys' Fees.

(a) Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party's reasonable costs and expenses incurred including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys' fees and costs for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 8.2 shall include attorneys' fees on any appeal.

(b) For purposes of this Agreement, reasonable fees of a Party's in-house attorneys shall be no more than the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which such attorneys services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the applicable Party.

8.3 Notices. Except as provided in Sections 6.5(a) and (b), any notices to be provided under this Agreement must be delivered to the addresses and in the manner set forth in the DDA (if to the Authority or Developer) and the City DA (if to the City or Developer).

8.4 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, as governed by the DDA and City DA. This Agreement may be assigned only in connection with an assignment of the DDA and City DA that is permitted in accordance with their terms.

8.5 Other Agreements. The obligations of Developer under this Agreement will be those of a Party and not as an owner of property in the Project Site. Nothing in this Agreement may be construed as affecting the City's or Developer's rights, or duties to perform their respective obligations under the DDA, the City DA, the Interagency Cooperation

Agreement and other Development Requirements, and any Applicable Regulation. If this Agreement creates ambiguity in relation to or conflicts with any provision of the Financing Plan, the Financing Plan will prevail.

8.6 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, will not constitute a waiver of such Party's right to later insist upon and demand strict compliance by the other Party with the terms of this Agreement. Deemed Approval of a Supplement or Payment Request will not constitute a waiver of the right of the City or the Director of Public Works, as applicable, to obtain information and documents that would have been required for a proposed Supplement or Payment Request to be complete.

8.7 Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or will be construed to confer upon or to give to any person or entity other than the City, the Authority, and Developer any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions, or stipulations of this Agreement; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City or Developer will be for the sole and exclusive benefit of the City, the Authority, and Developer, subject to Section 8.4.

8.8 Amendment. This Agreement may be amended from time to time by the written agreement of the City and Developer, including a Supplement, executed by the City and Developer or otherwise Approved or Deemed Approved under Section 1.4. The Parties agree that changes to the forms of the Payment Requests as needed to reflect an Alternative Financing, to reflect formation and issuance alternatives as discussed in section 4.2 of the Financing Plan, or to make other adjustments to clarify and expedite the payment process under this Agreement are ministerial in nature and do not require an amendment to this Agreement.

8.9 Counterparts. This Agreement may be executed and delivered in any number of counterparts (including by fax, pdf, or other electronic means), each of which will be deemed an original, but all of which will constitute one and the same instrument.

8.10 Interpretation of Agreement. Unless otherwise specified, whenever in this Agreement reference is made to any capitalized Article, Section, Exhibit, Attachment, Supplement or any defined term, the reference will mean the Article, Section, Exhibit, Attachment, Supplement or defined term in this Agreement. Any reference to an Article or a Section includes all subsections, clauses, and subparagraphs of that Article or Section. The use in this Agreement of the words "including", "such as", or words of similar import when following any general term, statement or matter will not be construed to limit the statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions will prevail.

## **ARTICLE 9 DEFINITIONS**

## 9.1 Definitions.

**“Acceptable Title”** means title to real property or interest in real property free and clear of all liens, taxes, assessments, leases, easements, and encumbrances, whether or not recorded, except for: (a) those determined not to interfere materially with the intended use of such real property; (b) those required to satisfy the terms of the DDA or the City DA; and (c) if the lien is for any existing CFD, then the lien of the special taxes shall be a permitted exception to title so long as the real property, while owned by any Governmental Entity, is exempt from the special tax to be levied by the CFD.

**“Acceptance Date”** means the date that an action by the City or other Governmental Entity, as applicable, to accept dedication of or transfer of title to an Acquisition Facility becomes final.

**“Acquisition Facilities”** means the Infrastructure and other Improvements shown in Exhibit A, as such exhibit may be amended or supplemented from time to time in accordance with the provisions of this Agreement.

**“Actual Cost”** means Qualified Project Costs of an Acquisition Facility or Component (which includes any applicable Developer Allocation or Agreed-Upon Allocation).

**“Agreed-Upon Allocation”** is defined in Section 4.3(b).

**“Agreement”** is defined in the introductory paragraph.

**“Alternative Financing”** is defined in the Financing Plan.

**“Applicable City Regulations”** is defined in the DDA.

**“Approve”, “Approval” and “Approved”** are defined in the DDA.

**“Assignment and Assumption Agreement”** is defined in the DDA.

**“Authority”** means the Treasure Island Development Authority, a California non-profit public benefit corporation.

**“Authority Board”** is defined in the DDA.

**“Authority Costs”** is defined in the DDA

**“Authority Director”** is defined in the DDA.

**“Authorization”** is defined in the DDA.

**“Authorized Payment Calculation”** is defined in Section 5.1.

**“Authorized Payments”** means: (a) the Qualified Project Costs shown in Exhibit A that are not for Acquisition Facilities or Components constructed by Developer; and (b) other amounts for which Developer is entitled to receive payment or reimbursement under the Financing Plan, such as Pre-Development Costs (not including any return on such Pre-Development Costs).

**“Board of Supervisors”** is defined in the DDA.

**“CFD”** is defined in the Financing Plan.

**“CFD Act”** is defined in the Financing Plan.

**“CFD Bonds”** is defined in the Financing Plan.

**“CFD Conversion Date”** is defined in the Financing Plan.

**“City”** means the City and County of San Francisco, a public body, corporate and politic, of the State of California.

**“City DA”** is defined in the Financing Plan.

**“City Finance Deputy”** means the \_\_\_\_\_ of the City or any Person acting as such through a proper delegation of City under City policy (or any successor officer designated by or under law).

**“Complete”** (or its variant **“Completion”**) is defined in the DDA.

**“Component”** means a component or phase of an Acquisition Facility shown in Exhibit B, as amended from time to time by an Approved or Deemed Approved Supplement.

**“Construction Documents”** has the meaning described in the DRDAP.

**“DDA”** is defined in the Financing Plan.

**“Deemed Approved”** or **“Deemed Approval”** means a Supplement or Payment Request that will be treated as Approved in the form submitted for all purposes under this Agreement due to the expiration of any applicable review and approval periods provided in this Agreement.

**“Developer”** is defined in the DDA.

**“Developer Allocation”** is defined in Section 4.1(d).

**“Development Requirements”** is defined in the DDA.

**“Director of Public Works”** means the Director of Public Works of the City (or any successor officer designated by or under law) or the Director’s authorized designee, acting in that capacity under this Agreement and the Interagency Cooperation Agreement.

**“DRDAP”** is defined in the DDA.

**“Effective Date”** is defined in Section 1.1.

**“Financing Plan”** is defined in the DDA.

**“Funding Goals”** is defined in the Financing Plan.

**“Funding Sources”** is defined in the Financing Plan, and is subject to the limitations on the use of those funds set forth in the Financing Plan.

**“Governing Acts”** means, as applicable, the CFD Act, the IFD Act, or the laws governing the issuance of CFD Bonds, IFD Debt, or Alternative Financing.

**“Governmental Entity”** is defined in the DDA.

**“Identified Funding Sources”** is defined in Section 4.1(a).

**“IFD”** is defined in the Financing Plan.



**“IFD Act”** is defined in the Financing Plan.

**“IFD Debt”** is defined in the Financing Plan.

**“Improvements”** is defined in the DDA.

**“Indenture”** is defined in the Financing Plan.

**“Infrastructure”** is defined in the DDA.

**“Inspection Request”** is defined in Section 3.1(c).

**“Interagency Cooperation Agreement”** is defined in the DDA.

**“Major Phase”** is defined in the DDA.

**“Net Available Increment”** is defined in the Financing Plan.

**“Party”** or **“Parties”** means, individually or collectively as the context requires, Developer and the City.

**“Payment Request”** means a document to be used by Developer in requesting payment for: (a) the Actual Costs an Acquisition Facility or Component, substantially in the form of Exhibit C; or (b) an Authorized Payment to Developer, substantially in the form of Exhibit D.

**“Permit to Enter”** is defined in the DDA.

**“Person”** is defined in the DDA.

**“Plans”** means the applicable Construction Documents and Authorizations for the Acquisition Facilities or any Components as Approved under the DDA, the City DA, Applicable City Regulations, or, if applicable, standards of the other Governmental Entity.

**“Pre-Development Costs”** is defined in the Financing Plan.

**“Project”** is defined in the DDA.

**“Project Accounts”** is defined in the Financing Plan.

**“Project Applications”** is defined in the Interagency Cooperation Agreement.

**“Project Costs”** is defined in the Financing Plan.

**“Project Site”** is defined in the DDA.

**“Proof of Payment”** means a cancelled check, a wire confirmation demonstrating delivery of a direct transfer of funds, an executed and acknowledged unconditional lien release, or other evidence Approved by the City demonstrating payment of the applicable Actual Cost.

**“Public Financing”** is defined in the Financing Plan.

**“Qualified”** is defined in the Financing Plan.

**“Remainder Taxes”** is defined in the Financing Plan.

**“Remainder Taxes Project Account”** is defined in the Financing Plan.

**“Reviewing Party”** is defined in Section 1.4.

**“Soft Costs”** is defined in the Financing Plan.

**“Sub-Phase”** is defined in the DDA.

**“Supplement”** means a written amendment to Exhibit A or Exhibit B.

**“Supplement Review Period”** is defined in Section 1.4(a).

**“Third Party”** means a Person that is not a Party.

**“Third Party Reimbursements”** means payments, if any, from Third Parties that are received by Developer as a reimbursement of Qualified Project Costs incurred with respect to the Acquisition Facilities, such as utility or other reimbursements.

**“Transferee”** is defined in the DDA.

**“Vested Payment Request”** is defined in Section 6.2.

[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]

IN WITNESS WHEREOF, the City, Authority, and Developer have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

**CITY:**

CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation

By:

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

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

Approved as to form:

DENNIS J. HERRERA,  
City Attorney

By:

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

\_\_\_\_\_  
Deputy City Attorney

Approved on \_\_\_\_\_

**AUTHORITY:**

Authorized by City Resolution No. \_\_\_\_\_  
adopted \_\_\_\_\_.

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

TREASURE ISLAND DEVELOPMENT  
AUTHORITY,  
a California non-profit public benefit  
corporation

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

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

Title: Executive Director

**DEVELOPER:**

TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC,  
a California limited liability company

By: UST Lennar HW Scala SF Joint Venture,  
a Delaware general partnership  
its co-Managing Member

By: \_\_\_\_\_  
Name: Kofi Bonner  
Its: Authorized Representative

By: KSWM Treasure Island, LLC,  
a California limited liability company  
its co-Managing Member

By: WMS Treasure Island  
Development I, LLC,  
a Delaware limited liability company  
its Member

By: Wilson Meany Sullivan LLC,  
a California limited liability company  
its Sole Member and Manager

By: \_\_\_\_\_  
Name: Chris Meany  
Title: Co-Managing Member

## **EXHIBIT A**

### **Description of Acquisition Facilities and Authorized Payments to be Financed for the Project**

[To be completed and attached before execution of Acquisition and Reimbursement Agreement]

## **EXHIBIT B**

### **Description of Acquisition Facilities and Components, with Cost Estimates, and Authorized Payments and Components**

[To be completed from time to time]

## **EXHIBIT C**

### **Form of Payment Request – Acquisition Facilities and Components**

PAYMENT REQUEST NO. \_\_\_\_\_  
MADE ON BEHALF OF: \_\_\_\_\_ (“Developer”)  
MAJOR PHASE: \_\_\_\_\_ SUB-PHASE: \_\_\_\_\_

The undersigned hereby requests payment in the total amount of \$\_\_\_\_\_ for the Acquisition Facilities or Components (as described in Exhibit B to that certain Acquisition and Reimbursement Agreement among the City and County of San Francisco, Treasure Island Development Authority, and Treasure Island Community Development, LLC, dated for reference purposes only as of \_\_\_\_\_), all as more fully described in Exhibit C-1. In connection with this Payment Request, the undersigned hereby represents and warrants to the Director of Public Works and the City as follows:

1. He (she) is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth in this Payment Request.
2. The Acquisition Facilities or Components for which payment is requested were constructed in accordance with the DDA and City DA, and have been inspected and Approved for payment as indicated in the attached notice from the Director of Public Works.
3. All costs of the Acquisition Facilities or Components for which payment is requested hereby are Actual Costs, and have not been inflated in any respect, as indicated in the attached Proof of Payment. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.
4. The costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other Person who supplied goods or labor, as evidenced by the attached conditional or unconditional lien releases.
5. Developer is in compliance with the terms and provisions of the Acquisition and Reimbursement Agreement and no portion of the amount being requested to be paid was previously paid.
6. The Actual Cost of each Acquisition Facility or Component (a detailed calculation of which is shown in Exhibit C-2 for each such Acquisition Facility or Component), has been calculated in conformance with the terms of the Acquisition and Reimbursement Agreement.
7. To the knowledge of the undersigned, Developer is not delinquent in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special assessments levied on the regular County tax rolls against property owned by Developer in the Project Site.

8. The Payment Request must be paid solely from the following sources of Funding Sources:

<b>Funding Sources from which Actual Costs may be Paid (check one or more boxes)</b>	<b>Identified Funding Sources</b>
	<b>CFD No. 1 Bonds</b>
	<b>Remainder Taxes for CFD No. 1</b>
	<b>CFD No. 2 Bonds</b>
	<b>Remainder Taxes for CFD No. 2</b>
	<b>IFD Debt for IFD No. 1</b>
	<b>Net Available Increment in IFD No. 1</b>
	<b>IFD Debt for IFD No. 2</b>
	<b>Net Available Increment in IFD No. 2</b>
	<b>Other Source (specify):</b>
<b>Total Actual Cost</b>	

9. Payments under this Payment Request, when Approved or Deemed Approved, to be made as follows:

[ ] The amount of \$ \_\_\_\_\_ to the Project Account(s) held by Developer at the following financial institution(s) by wire, according to the following instructions:

\_\_\_\_\_  
 \_\_\_\_\_

[ ] The following amount(s) the following Third Party(ies) at the following address(es):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. Other relevant information about Payment Request: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_



I hereby declare that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge.

DEVELOPER:

[insert name of Developer]

By: \_\_\_\_\_  
Authorized Representative  
of Developer

Date: \_\_\_\_\_

**Attachments:**

- ☐ Notice of Approval following inspection by Director of Public Works
- ☐ Unconditional lien releases from the following: \_\_\_\_\_
- ☐ Conditional lien releases from the following: \_\_\_\_\_
- ☐ **For Completed Acquisition Facility:** Copy of recorded conveyance of land
- ☐ **For Completed Acquisition Facility:** Copy of determination of completeness
- ☐ **For Completed Acquisition Facility:** Original assignment of warranties and guaranties
- ☐ **For Completed Acquisition Facility:** Original assignment of Plans
- ☐ **For Completed Acquisition Facility:** Original assignment of reimbursements from Third Parties payable with respect to the Acquisition Agreement
- ☐ **For Completed Acquisition Facility:** As-built drawings of the Acquisition Facility
- ☐ Exhibit C-1
- ☐ Exhibit C-2

**DEEMED APPROVAL NOTICE**

**Under Section 4.2(b) of the Acquisition and Reimbursement Agreement,**

**if you fail to notify Developer that**

**this Payment Request is Approved or disapproved**

**within thirty (30) days after your receipt of this Payment Request,**

**it will be Deemed Approved.**

**Payment Request Approved on \_\_\_\_\_.**

By: \_\_\_\_\_  
Director of Public Works

## **EXHIBIT C-1**

### **Acquisition Facilities and Components to Which Payment Request Applies**

PAYMENT REQUEST NO. \_\_\_\_\_

MADE ON BEHALF OF: \_\_\_\_\_

MAJOR PHASE: \_\_\_\_\_

SUB-PHASE: \_\_\_\_\_

1. The Acquisition Facilities and Components for which payment is requested under this Payment Request are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Contract information for each contractor, subcontractor, materialman, and other contract for which payment is requested under this Payment Request is shown below.

Name	Amt. of Contract	Amt. Requested	Amt. Previously Pd.
Total			

**Attachments:**

[ ] Approved Supplement(s) *(include proof of delivery if Deemed Approved)*

[ ] Proof of Payment for each amount and included in the Actual Costs

## **EXHIBIT C-2**

### **Calculation of Actual Cost**

PAYMENT REQUEST NO. \_\_\_\_\_

MADE ON BEHALF OF: \_\_\_\_\_

MAJOR PHASE: \_\_\_\_\_

SUB-PHASE: \_\_\_\_\_

1. Description (by reference to Exhibit B to the Acquisition and Reimbursement Agreement) of the Acquisition Facility or Component \_\_\_\_\_
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost, including any Developer Allocation): \$ \_\_\_\_\_
3. Subtractions:
  - A. Holdback for lien releases (see Section 4.4(c) of the Acquisition and Reimbursement Agreement): (\$ \_\_\_\_\_)
  - B. Retention (see Section 4.4(e) of the Acquisition and Reimbursement Agreement): (\$ \_\_\_\_\_)
  - C. Third Party Reimbursements: (\$ \_\_\_\_\_)
4. Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3) \$ \_\_\_\_\_

#### **Attachments – Complete Acquisition Facilities Only:**

[ ] Copies of Payment Requests for which release of retention is requested.

## **EXHIBIT D**

### **Form of Payment Request – Authorized Payments**

PAYMENT REQUEST NO. \_\_\_\_\_

MADE ON BEHALF OF: \_\_\_\_\_ (“Developer”)

MAJOR PHASE: \_\_\_\_\_

SUB-PHASE: \_\_\_\_\_

The undersigned hereby requests payment in the total amount of \$\_\_\_\_\_ for the reimbursement of Authorized Payments (as described in Exhibit B to that Acquisition and Reimbursement Agreement), to be paid solely from following Funding Sources:

<b>Funding Sources from which Authorized Payments may be Paid (check one or more boxes)</b>	<b>Identified Funding Sources</b>
	<b>CFD No. 1 Bonds</b>
	<b>Remainder Taxes for CFD No. 1</b>
	<b>CFD No. 2 Bonds</b>
	<b>Remainder Taxes for CFD No. 2</b>
	<b>IFD Debt for IFD No. 1</b>
	<b>Net Available Increment in IFD No. 1</b>
	<b>IFD Debt for IFD No. 2</b>
	<b>Net Available Increment in IFD No. 2</b>
<b>Total Authorized Payment</b>	

In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth in this Payment Request.
2. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.
3. Developer is in compliance with the terms and provisions of the Acquisition and Reimbursement Agreement and no portion of the amount being requested to be paid was previously paid.
4. To the knowledge of the undersigned, Developer is not delinquent in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special assessments levied on the regular County tax rolls against property owned by Developer in the Project Site.

I hereby declare that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge.

DEVELOPER:

[insert name of Developer]

By: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_

**Attachments:**

- ☐ Proof of Payment
- ☐ Authorized Payment Calculation

**DEEMED APPROVAL NOTICE**

**Under Section 5.2 of the Acquisition and Reimbursement Agreement,  
if you fail to notify Developer that  
this Payment Request is Approved or disapproved  
within ten (10) days after your receipt of this Payment Request,  
it will be Deemed Approved.**

**Payment Request Approved and counter-signed on \_\_\_\_\_:**

By: \_\_\_\_\_  
Executive Director  
Treasure Island Development Authority

## **Attachment B**

### **Expected Categories of Island Wide Costs**

**Exhibit E**  
**Office Allocation Finding Resolution**



## **DRAFT Planning Commission Resolution No.**

**HEARING DATE: April 21, 2011**

*Date:* April 7, 2011

*Case No.:* 2007.0903BEMRTUWZ

*Project* **Treasure Island/Yerba Buena Island Project**

### **B Case: Section 320-325 Findings**

*Location:* Treasure Island and Yerba Buena Island

*Current Zoning:* P (Public) District/40-X Height and Bulk District

*Block/Lot:* 1939/001, 002

*Staff Contact:* Joshua Switzky - (415) 575-6815

[joshua.switzky@sfgov.org](mailto:joshua.switzky@sfgov.org)

### **FORMULATING A RESOLUTION MAKING OFFICE ALLOCATION FINDINGS FOR THE PRIORITIZATION FO 100,000 SQUARE FEET OF OFFICE SPACE, PURSUANT TO PLANNING CODE SECTIONS 320-325 FOR THE TREASURE ISLAND/YERBA BUENA ISLAND PROJECT.**

#### **RECITALS**

1. **WHEREAS**, Originally constructed in 1937 as a possible site for the San Francisco Airport, Treasure Island was first used to host the Golden Gate International Exposition from 1939-1940. Shortly thereafter in World War II, the United States Department of Defense converted the island into a naval station, which operated for more than five decades. Naval Station Treasure Island was subsequently closed in 1993 and ceased operations in 1997. Since the closure of the base, the City and the community have been planning for the reuse of former Naval Station Treasure Island and adjacent Yerba Buena Island.
2. **WHEREAS**, Former Naval Station Treasure Island consists of approximately 550 acres including Yerba Buena Island. Today the site is characterized by aging infrastructure, environmental contamination from former naval operations, deteriorated and vacant buildings, and asphalt and other impervious surfaces which cover approximately 65% of the site. The site has few public amenities for the approximately 1,820 residents who currently reside on the site. This legislation creating the Treasure Island/Yerba Buena Island Special Use District, the Treasure Island/Yerba Buena Island Height and Bulk District, and the related zoning and General

Plan amendments, including the adoption of a Treasure Island/Yerba Buena Island Area Plan will implement the proposed Treasure Island/Yerba Buena Island Project (“Project”).

3. **WHEREAS**, The Project will include (a) approximately 8,000 new residential units, with at least 25 percent of which (2,000 units) will be made affordable to a broad range of very-low to moderate income households, (b) adaptive reuse of 311,000 square feet of historic structures, (c) 140,000 square feet of new retail uses and 100,000 square feet of commercial office space, (d) 300 acres of parks and open space, (e) new and or upgraded public facilities, including a joint police/fire station, a school, facilities for the Treasure Island Sailing Center and other community facilities, (f) 400-500 room hotel, (g) new 400 slip marina, (h) transportation infrastructure, including a ferry/quay intermodal transit center.

4. **WHEREAS**, In 2003, the Treasure Island Development Authority (“TIDA”) selected through a competitive three year long process, Treasure Island Community Development, LLC (“TICD”) to serve as the master developer for the Project.

5. **WHEREAS**, In 2006, the Board endorsed a Term Sheet and Development Plan for the Project, which set forth the terms of the Project including a provision for a Transition Plan for Existing Units on the site. In May of 2010 the Board endorsed a package of legislation that includes and update to the Development Plan and Terms Sheet, terms of an Economic Development Conveyance Memorandum of Agreement for the conveyance of the site from the Navy to the City, and a Term Sheet between TIDA and the Treasure Island Homeless Development Initiative (“TIHDI”).

6. **WHEREAS**, the proposed Project provides that to facilitate early job generation within the Project site during the early phased of development, that 100,000 square feet of office development is to receive priority under Sections 320-325 over all office development proposed elsewhere in the City, except within (a) the Mission Bay South Project Areas; (b) the Transbay Transit Tower (proposed for development on lot 001 of assessors Block 3720) (but not the remainder of the Transbay Redevelopment Project Area); and (c) the Hunters Point Shipyard Redevelopment Project Area and Zone 1 of the Bayview Hunters Point Redevelopment Project Area.

7. **WHEREAS**, Any office development at Treasure Island or Yerba Buena Island will be subject to the limitation on the amount of square footage which may be approved, as set forth in Planning Code Section 321 or as amended by the voters.

8. **WHEREAS**, Planning Code Sections 320-325 require review of proposed office development, as defined in Planning Code Section 320, by the Planning Commission and consideration of certain factors in approvals of any office development.

9. **WHEREAS**, The Planning Commission had reviewed and considered the factors set forth in Planning Code Section 321(b) in order to make the determination that the office development contemplated by the Project in particular will promote the public welfare, convenience and necessity. Those factors include consideration of the balance between economic growth and housing, transportation and public services, the contribution of the office development to the objectives and policies of the General Plan, the quality of the design of the proposed office development, the suitability of the proposed office development for its location, the anticipated uses of the proposed office development, in light of employment opportunities to be provided, needs of existing businesses, and the available supply of space suitable for such anticipated uses, the extent to which the proposed development will be owned or occupies by a single entity, and the use of transferable development rights for such office development.

10. **WHEREAS**, the Planning Commission will review the design and details of individual office developments which are proposed in the Project site, using the design standards and guidelines set forth in the Design for Development reviewed by this Planning Commission, to confirm that the specific office development continues to be consistent with the findings set forth herein.

11. **WHEREAS**, On April 21, 2011, by Motion No. \_\_\_\_\_, the Planning Commission certified the Final Environmental Impact Report ("FEIR") as accurate, complete and in compliance with the California Environmental Quality Act ("CEQA").

12. **WHEREAS**, On April 21, 2011 by Resolution No. \_\_\_\_\_, the Planning Commission adopted findings in connection with its consideration of, among other things, the adoption of a Development Agreement, under CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and made certain findings in connection therewith, which findings are hereby incorporated herein by this reference as if fully set forth.

13. **WHEREAS**, That the Planning Commission having considered this proposal at a public meeting on April 21, 2011 pursuant to Planning Code Sections 302(b) and 340, having heard and reviewed oral and written testimony and reports, and having reviewed and certified the Final Environmental Impact Report on the Redevelopment Plans as adequate, complete, and in compliance with CEQA, does hereby find the Treasure Island/Yerba Buena Island Development Project, in conformity with the General Plan as it is recommended to be amended by Resolution No. \_\_\_\_\_.

**THEREFORE, BE IT RESOLVED**, That the Planning Commission hereby finds that up to 100,000 square feet of the office development contemplated by the Treasure Island/Yerba Buena Island Development Project in particular promotes the public welfare, convenience and necessity for the following reasons:

1. The office development is part of the Project's land use plan and Design for Development document, which would eliminate blighting influences and correct environmental deficiencies on the Project site through a comprehensive plan for development.
2. The Project and its supporting documents include a series of detailed design standards and guidelines which will ensure quality design of office development as well as a quality urban design scheme.
3. The Project provides the important ability to retain and promote, within the City and County of San Francisco, the possibility of new emerging industries and space for adjacent office and related uses.
4. Implementing permitted office uses as part of the Treasure Island/Yerba Buena Island Special Use District enables the achievement of a coordinated mixed-use development plan incorporating many features, such as large open spaces and parks, a new street grid and other sustainable design features.
5. Implementing the office use contemplated by the Project would strengthen the economic base of the Project site and the City as a whole by strengthening retail and other commercial functions in the community through the addition of approximately 140,000 leasable square feet of various kinds of retail space, and as much as about 100,000 leasable square feet of mixed office.

6. The development proposed by the Project will also have significant positive economic impacts on the City. At full build-out, employment in the Project site is expected to be about 2,600. Direct and indirect job generation is estimated to be about 2,100. About 55% of the direct and indirect jobs are expected to be held by San Francisco residents. Project-related construction employment is projected to total 9,900 annual full-time equivalent jobs over the build-out period (or 762 annual average total). The employees working at the Project site are expected to generate total household income of about \$195 million annually. Total direct, indirect and induced economic activity within the City and County of San Francisco is expected to be approximately \$967 million. The Project provides an unprecedented system for diversity and economic development, including good faith efforts to meet goals for hiring minority consulting and contracting businesses, hiring of minority laborers, compliance with prevailing wage policies. Development of office uses will help to create the employment opportunities to achieve such hiring goals.
7. The Project includes the opportunity for substantial new publicly accessible open spaces totaling upwards of approximately 300 acres including a ecological, recreational, neighborhood and cultural areas, including: a shoreline park for pedestrians and bicycles; an approximately 100-acre Great Park with stormwater wetlands, passive open space, the existing sailboat launch and space for an environmental educational center; seven neighborhood parks and playgrounds; a linear park; off-leash dog areas; space for art installations; an urban agriculture park; 40 acres of athletic fields; improvements to the existing sailing center; a new 5 to 6-acre Hilltop Park on Yerba Buena Island, in addition to existing parks and open space; plazas and active public spaces; and a 3-acre Cultural Park adjacent to Building 1. Office users will benefit from the conveniently located open space, and the development of office uses will help to finance the provision of such open space and its maintenance.
8. The office uses would be located in an ideal area to take advantage of a wide variety of transit, including a new ferry service between the islands and downtown San Francisco, new bus service operating between the Project Area and downtown Oakland provided by AC Transit and on-island shuttle-busses that will provide transit service throughout the Project Area. The Project site has been designed in consultation with the City, including MUNI, to capitalize on opportunities to coordinate with and expand transit systems to serve the Project. The Project also includes Transportation Management Programs which will be in place throughout the development of the Project.
9. The Project includes a new joint police/fire station on Treasure Island, child-care facilities, a school and other additional community meeting rooms and facilities station and a flexible approach to other community facilities, so that necessary services and assistance are available near the office uses and so that office uses will not otherwise burden existing services.
10. The Project and its supporting documents include significant new infrastructure improvements including: a comprehensive program for geotechnical stabilization and improvement of the island, a comprehensive strategy to address potential

future sea level rise, rebuilding of a new backbone utility and street network, a new wet utility system including new water tanks, a secondary/emergency back-up water line, new wastewater treatment and recycled water plant and construction of stormwater treatment wetlands and a new dry utility network including electrical, gas and telecommunications lines. An emphasis will be placed on sustainable development techniques as outlined in the Sustainability Plan and Infrastructure Plan. The office development would be adequately served by the infrastructure and the tax increment generated by office development in the Project site will also provide a critical component of the financing of such infrastructure.

11. This new infrastructure included in the Project will be financed through a self-taxing financing device to be imposed upon the Project site (excluding affordable housing sites and open space).

**BE IT FURTHER RESOLVED**, That the Planning Commission has considered the factors set forth in Planning Code Section 321(b)(3)(A)-(G) and finds as follows:

- (A) The apportionment of potential office space over the course of many approval periods during the anticipated 20-30 year build-out of the Project will remain within the limits of Planning Code Section 321 and will maintain a balance between economic growth and housing, transportation and public services, pursuant to the terms of the Plan and its supporting documents which provide for the appropriate construction and provision of housing, roadways, transit and all other necessary public services in accordance with the Infrastructure Plan; and
- (B) As determined in this Resolution, above, and for the additional reasons set forth in Planning Commission Resolution No. \_\_\_\_ office uses and office development contemplated in the Project, and all of the other implementation actions, are consistent with the objectives and policies of the General Plan and Priority Policies of Planning Code Section 101.1 and will contribute positively to the achievement of City objectives and policies as set forth in the General Plan; and
- (C) The design guidelines for the Project are set forth in the Treasure Island/Yerba Buena Island Special Use District and the Treasure Island/Yerba Buena Island Design for Development document. Planning staff have reviewed the design standards and guidelines and finds that such standards and guidelines will ensure quality design of any proposed office development. In addition, the Planning Commission will review any specific office development subject to the terms of Planning Code §§320-325 to confirm that the design of that office development is consistent with the findings set forth herein; and
- (D) The potential office development contemplated in the Project is suitable for the Project site where it would be located. As discussed above, transportation, housing and other public services including open space will be provided in the Project site. The office development would be located in an area which is not currently developed, nor is it heavily developed with other office uses; and
- (E) As noted above, the anticipated uses of the office development will enhance employment opportunities and will serve other related uses which wish to locate in the Project site, where the underdeveloped nature of the area provides a readily available supply of space for potential office uses; and

- (F) While the overall Project is being developed by a master developer, the proposed office development is available to serve a variety of users, including a variety of businesses expected to locate in the area, and could accommodate a multiplicity of owners; and
- (G) The Project does not provide for the use of transferrable development rights (“TDRs”) and this Planning Commission does not believe that the use of TDRs is useful or appropriate in the Project Area, given the availability of space for development and the fact that only a relatively few number of buildings have been identified as a potential historic resource; and;

**BE IT FURTHER RESOLVED**, That the Planning Commission will review and approve the design of specific office development which may be proposed in the Project site and subject to the provisions of Planning Code §§320-325, using the design standards and guidelines set forth in the Design for Development, to confirm that the specific office development continues to be consistent with the findings set forth herein; and

**BE IT FURTHER RESOLVED**, That upon such determination, the Planning Commission will issue an authorization for the proposed office development project.

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on April 21, 2011.

Linda D. Avery  
Commission Secretary

AYES:

NOES:

ABSENT:

## Exhibit F

### Administrative Code Section 56.17(b)

#### SEC. 56.17. - PERIODIC REVIEW.

(a)

**Time for and Initiation of Review.** The Director shall conduct a review in order to ascertain whether the applicant/developer has in good faith complied with the development agreement. The review process shall commence at the beginning of the second week of January following final adoption of a development agreement, and at the same time each year thereafter for as long as the agreement is in effect. The applicant/developer shall provide the Director with such information as is necessary for purposes of the compliance review.

Prior to commencing review, the Director shall provide written notification to any party to a collateral agreement which the Director is aware of pursuant to Sections 56.11(a) and (d), above. Said notice shall summarize the periodic review process, advising recipients of the opportunity to provide information regarding compliance with the development agreement. Upon request, the Director shall make reasonable attempts to consult with any party to a collateral agreement if specified terms and conditions of said agreement have been incorporated into the development agreement. Any report submitted to the Director by any party to a collateral agreement, if the terms or conditions of said collateral agreement have been incorporated into the development agreement, shall be transmitted to the Commission and/or Board of Supervisors.

(b)

**Finding of Compliance by Director.** If the Director finds on the basis of substantial evidence, that the applicant/developer has complied in good faith with the terms and conditions of the agreement, the Director shall notify the Commission and the Board of Supervisors of such determination, and shall at the same time cause notice of the determination to be published in the official newspaper and included on the Commission calendar. If no member of the Commission or the Board of Supervisors requests a public hearing to review the Director's determination within 14 days of receipt of the Director's notice, the Director's determination shall be final. In such event, the Director shall issue a certificate of compliance, which shall be in recordable form and may be recorded by the developer in the official records. The issuance of a certificate of compliance by the Director shall conclude the review for the applicable period.

(c)

**Public Hearing Required.** If the Director determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the development agreement, or otherwise determines that the public interest would be served by further review, or if a member of the Commission or Board of Supervisors requests further review pursuant to Subsection (b) above, the Director shall make a report to the Commission which shall conduct a public hearing on the matter. Any such public hearing must be held no sooner than 30 days, and no later than 60 days, after the Commission has received the Director's report. The Director shall provide to the applicant/developer (1) written notice of the public hearing scheduled before the Commission at least 30 days prior to the date of the hearing, and (2) a copy of the Director's report to the Commission on the date the report is issued.

(d)

**Findings Upon Public Hearing.** At the public hearing, the applicant/developer must demonstrate good faith compliance with the terms of the development agreement. The

Commission shall determine upon the basis of substantial evidence whether the applicant/developer has complied in good faith with the terms of the development agreement.

(e)

**Finding of Compliance by Commission.** If the Commission, after a hearing, determines on the basis of substantial evidence that the applicant/developer has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall instruct the Director to issue a certificate of compliance, which shall be in recordable form, may be recorded by the applicant/developer in the official records, and which shall conclude the review for that period; provided that the certificate shall not be issued until after the time has run for the Board to review the determination. Such determination shall be reported to the Board of Supervisors. Notice of such determination shall be transmitted to the Clerk of the Board of Supervisors within three days following the determination. The Board may adopt a motion by majority vote to review the decision of the Planning Commission within 10 days of the date after the transmittal. A public hearing shall be held within 30 days after the date that the motion was adopted by the Board. The Board shall review all evidence and testimony presented to the Planning Commission, as well as any new evidence and testimony presented at or before the public hearing. If the Board votes to overrule the determination of the Planning Commission, and refuses to approve issuance of a certificate of compliance, the Board shall adopt written findings in support of its determination within 10 days following the date of such determination. If the Board agrees with the determination of the Planning Commission, the Board shall notify the Planning Director to issue the certificate of compliance.

(f)

**Finding of Failure of Compliance.** If the Commission after a public hearing determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall either (1) extend the time for compliance upon a showing of good cause; or (2) shall initiate proceedings to modify or terminate the agreement pursuant to Section 56.18

*(Added by Ord. 372-88, App. 8/10/88; amended by Ord. 59-91, App. 2/27/91; Ord. 287-96, App. 7/12/96)*