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RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Treasure Island Development Authority  
c/o Office of Economic and Workforce Development  
City Hall, Room 448  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attention: Treasure Island Project Director

Treasure Island/Yerba Buena Island (portions)

*Space Above Reserved for Recorder's Use*

**FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

APNs: Block 1939 Lots 014, 015, 017-019, 020, 045, 081, 083-088, 090, 091, 092 (portion), 093, 096, 098-106, 108-110, 112-115, 117-175, 177-180; Block 8901 Lots 003-005; Block 8902 Lots 004, 465; Block 8903 Lots 003, 004; Block 8904 Lots 004, 005; Block 8905 Lots 003, 004; Block 8906 Lots 007-009; Block 8925 Lot 001; Block 8926 Lot 001; Block 8927 Lots 001-003; Block 8928 Lot 001; Block 8930 Lots 001, 002; Block 8931 Lots 001-004; Block 8932 Lot 001; Block 8933 Lots 001-004; Block 8934 Lots 001-007; Block 8935 Lots 001, 002; Block 8936 Lots 001, 002; Block 8937 Lots 001-003; Block 8938 Lots 001, 002; Block 8939 Lot 001; Block 8940 Lot 001; Block 8941 Lots 001, 002; Block 8942 Lot 001; Block 8943 Lot 001; Block 8944 Lot 001; Block 8945 Lots 002-005, 007; Block 8946 Lots 002-005, 007; Block 8947 Lot 002; Block 8948 Lot 001; Block 8949 Lot 002; Block 8950 Lot 002; Block 8952 Lot 001; Block 8953 Lots 005, 006; Block 8954 Lots 003, 004; Block 8958 Lots 002, 003.

Addresses: 701-749 Avenue B; 1-49, 100, and 121-199 Avenue D; 740 and 750 Avenue E; 120-139, 141, and 160-249 Avenue F; 1 and 51 Avenue G; 111, 121-181, 191-369, and 380-699 Avenue H; 8, 10, 110, 120-198, 200-371, 620-680, 750 and 850 Avenue I; 100, 131, 151, 200, 251, 740, and 800-1099 Avenue M; 299-299 Avenue N 300-598, 1-2 and 387-388 Avenue Of The Palms; Avenue Of The Palms (No Street Number); 28, 39-49, and 55-77 Bruton St.; Bruton St. (No Street Number); 220-279, 300, 302, 304, 320, 331-599, 601-699, 710, 720-721, 725, and 740 California Ave.; California Ave. (No Street Number); 200-699 Clipper Cove Way; Clipper Cove Way (No Street Number); 55 Cravath St.; Cravath St. (No Street Number); 1-199 Forest Rd.; Forest Rd. (No Street Number); Hilltop Park (No Street Number); 1-99 Hillcrest Rd.; 22 and 78 Johnson St.; Johnson St. (No Street Number); 1, 201-299, and 530 Macalla Rd.; Macalla Rd. (No Street Number); 35-38 Meadow Dr.; 292 N. Gate Rd.; N. Gate Rd.

(No Street Number); 300-304 Nimitz Dr.; 1120-1128 Reeves Ct.; 1-15 and 99 Signal Rd.; 7 Swiss Ave.; Trade Winds Ave. (No Street Number); Treasure Island Rd. (No Street Number); 51-99 Whiting Way; 66-327 Yerba Buena Dr.; 60-120 Yerba Buena Rd.; Yerba Buena Rd. (No Street Number); 600-699, 731, 760, 811, 831, 851, and 871 3rd St.; 450-599, 601-699, 740, 760, 799, 821, 849-850, and 869 4th St.; 4th St. (No Street Number); 500-599 and 800 5th St.; 751 9th St.; 9th St. (No Street Number); 820 10th St.; 600 11th St.; 401 and 849 13th St.; Treasure Island Water Parcels; Yerba Buena Island Water Parcels; Portions of Treasure Island and Yerba Buena Island, San Francisco, CA

**FIRST AMENDMENT TO**  
**DEVELOPMENT AGREEMENT**  
**(TREASURE ISLAND/YERBA BUENA ISLAND)**

FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT

between

THE CITY AND COUNTY OF SAN FRANCISCO

and

TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC

RELATIVE TO TREASURE ISLAND/YERBA BUENA ISLAND

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “**First Amendment**”) is made as of August 1, 2024 (the “**Effective Date**”) by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), and TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC, a California limited liability company (“**Developer**”), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code.

### RECITALS

A. The City and Developer entered into that certain Development Agreement, dated for reference purposes only as of June 28, 2011 and recorded in the Official Records of the City and County of San Francisco (the “**Official Records**”) on August 10, 2011 as Document No. 2011-J235240 (the “**Development Agreement**”). All initially capitalized terms used but not defined in this First Amendment shall have the meaning given to such terms in the Development Agreement. The Development Agreement relates to certain property, as shown in the attached Exhibit A and more particularly described in the attached Exhibit B (the “**Project Site**”).

B. On June 7, 2011, the Board of Supervisors by Resolution 241-11 approved that certain Disposition and Development Agreement (Treasure Island/Yerba Buena Island) between the Parties (as amended, the “**Original DDA**”). The Parties subsequently entered into the Original DDA, dated for reference purposes only as of June 28, 2011 (the “**Original Reference Date**”). The Original DDA was subsequently amended by that certain First Amendment to Disposition and Development Agreement (Treasure Island/Yerba Buena Island) dated as of October 23, 2015 and recorded in the Official Records on November 5, 2015 as document No. 2015-K153304, and by that certain Second Amendment to Disposition and Development Agreement (Treasure Island/Yerba Buena Island) dated as of January 18, 2018 and recorded in the Official Records on January 22, 2018 as document No. 2018-K569072.

C. Since the Original Reference Date, the Project has faced a series of challenges, including at least six years of permitting and construction delays arising from, among other things, CEQA litigation, significant construction cost increases, a global pandemic, a rapid rise in interest rates, and a softening of the San Francisco residential condominium and rental markets. Despite these challenges, Developer has proceeded to substantially complete Infrastructure and Stormwater Management Controls within Sub-Phase 1 (on Yerba Buena Island), and Sub-Phase 2 (on Treasure Island) to support the construction of up to approximately 2,000 residential units, of which 974 have either been completed or are currently under construction, and of which 315 are below market rate. Developer has also obtained approval of Sub-Phase 3 on Treasure Island and has initiated preliminary construction activities (demolition and geotechnical) in this Sub-Phase. However, in light of these delays and challenging market conditions, Developer now faces potential delays in its ability to finance and build the necessary Infrastructure and Stormwater Management Controls for the next sub-phase of development on Treasure Island, which is intended to support up to 1,500 residential units, including 250 affordable housing units and a 240 bed behavioral health project, all of which are needed for the City to achieve its housing production goals established under its Housing Element 2022 Update of the General Plan and the Mayor’s Housing for All implementation strategy.

D. In light of these significant Project challenges, the Authority and Developer, together with the City, have negotiated a financial package that will allow Developer and Vertical Developers to continue with horizontal and vertical development, contribute to the City's housing production goals and provide the Authority with the remainder of the Major Phase 1 public improvements in a timely manner. This First Amendment addresses a subset of those challenges by, among other things, amending the Financing Plan to reflect the City's and Developer's commitment to the Project.

E. The Parties now wish to execute and record this First Amendment to set forth certain modifications to the Development Agreement to reflect the City's and Developer's commitment to the Project.

## A G R E E M E N T S

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants and agreements set forth in this First Amendment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Developer and City hereby agree as follows:

### 1. EXHIBITS

Exhibit C (Project Approvals) is hereby deleted in its entirety and amended and restated by Exhibit C attached hereto.

Exhibit D (Financing Plan) is hereby deleted in its entirety and amended and restated by Exhibit D attached hereto.

### 2. NOTICE ADDRESSES

The Parties hereby include a statement of the current addresses of the Parties for purposes of notices delivered in accordance with Section 11.9 of the Development Agreement:

To the City:

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

with a copy to:

Office of the City Attorney  
City Hall, Room 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  
2000 FivePoint, 3<sup>rd</sup> Floor  
Irvine, California 92618  
Attn: Sandy Goldberg; Laura Mask

with a copy to:

Wilson Meany  
4 Embarcadero Center, Suite 3330  
San Francisco, California 94111  
Attn: Chris Meany; Controller

with a copy to:

Gibson, Dunn & Crutcher LLP  
One Embarcadero Center, Suite 2600  
San Francisco, California 94111-3715  
Attn: Neil H. Sekhri

**3. NO OTHER MODIFICATIONS**

Except as expressly provided in this First Amendment, the terms and provisions of the Development Agreement are unmodified.

**4. COUNTERPARTS**

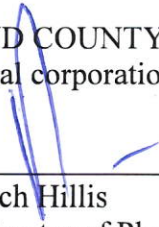
This First Amendment may be signed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the Effective Date.

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
\_\_\_\_\_  
Rich Hillis  
Director of Planning

Approved as to form:

DAVID CHIU  
City Attorney

By:   
\_\_\_\_\_  
Heidi Gewertz  
Deputy City Attorney

Approved on April 30, 2024

Board of Supervisors Ordinance No. 93-24

[Signatures continue on following page.]

**DEVELOPER:**

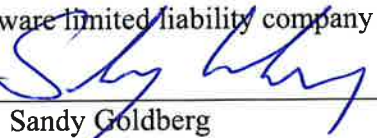
TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC,  
a California limited liability company

By:   
Name: Sandy Goldberg  
Its: Vice President

By: \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

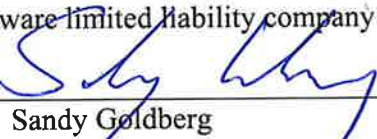
Consented to by:

TREASURE ISLAND SERIES 1, LLC,  
a Delaware limited liability company

By:   
Name: Sandy Goldberg  
Its: Vice President

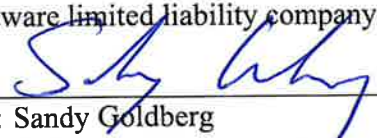
By: \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

TREASURE ISLAND SERIES 2, LLC,  
a Delaware limited liability company

By:   
Name: Sandy Goldberg  
Its: Vice President

By: \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

TREASURE ISLAND SERIES 3, LLC,  
a Delaware limited liability company

By:   
Name: Sandy Goldberg  
Its: Authorized Signatory

By: \_\_\_\_\_  
Name: Christopher Meany  
Its: Authorized Signatory



**DEVELOPER:**

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

By: \_\_\_\_\_  
Name: Sandy Goldberg  
Its: Vice President

By:  \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

Consented to by:

TREASURE ISLAND SERIES 1, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Sandy Goldberg  
Its: Vice President

By:  \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

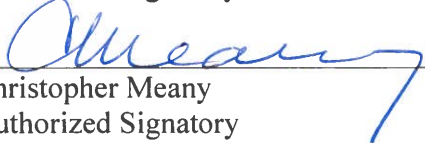
TREASURE ISLAND SERIES 2, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Sandy Goldberg  
Its: Vice President

By:  \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

TREASURE ISLAND SERIES 3, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Sandy Goldberg  
Its: Authorized Signatory

By:  \_\_\_\_\_  
Name: Christopher Meany  
Its: Authorized Signatory



**NOTARY ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS  
COUNTY OF Orange)

On August 12, 2024

before me, Peggy R. Yazloff, a Notary Public, personally appeared

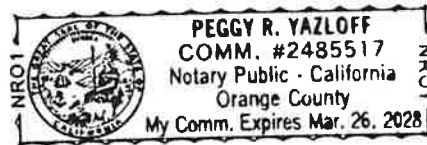
Sandy Goldberg

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Peggy R. Yazloff  
Signature of Notary Public



**NOTARY ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS  
COUNTY OF San Francisco)

On August 6, 2024

before me, Eileen M. Aniciete, a Notary Public, personally appeared

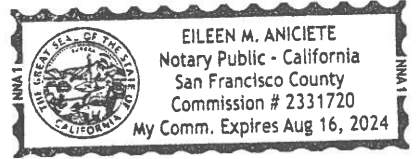
Christopher Meany

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

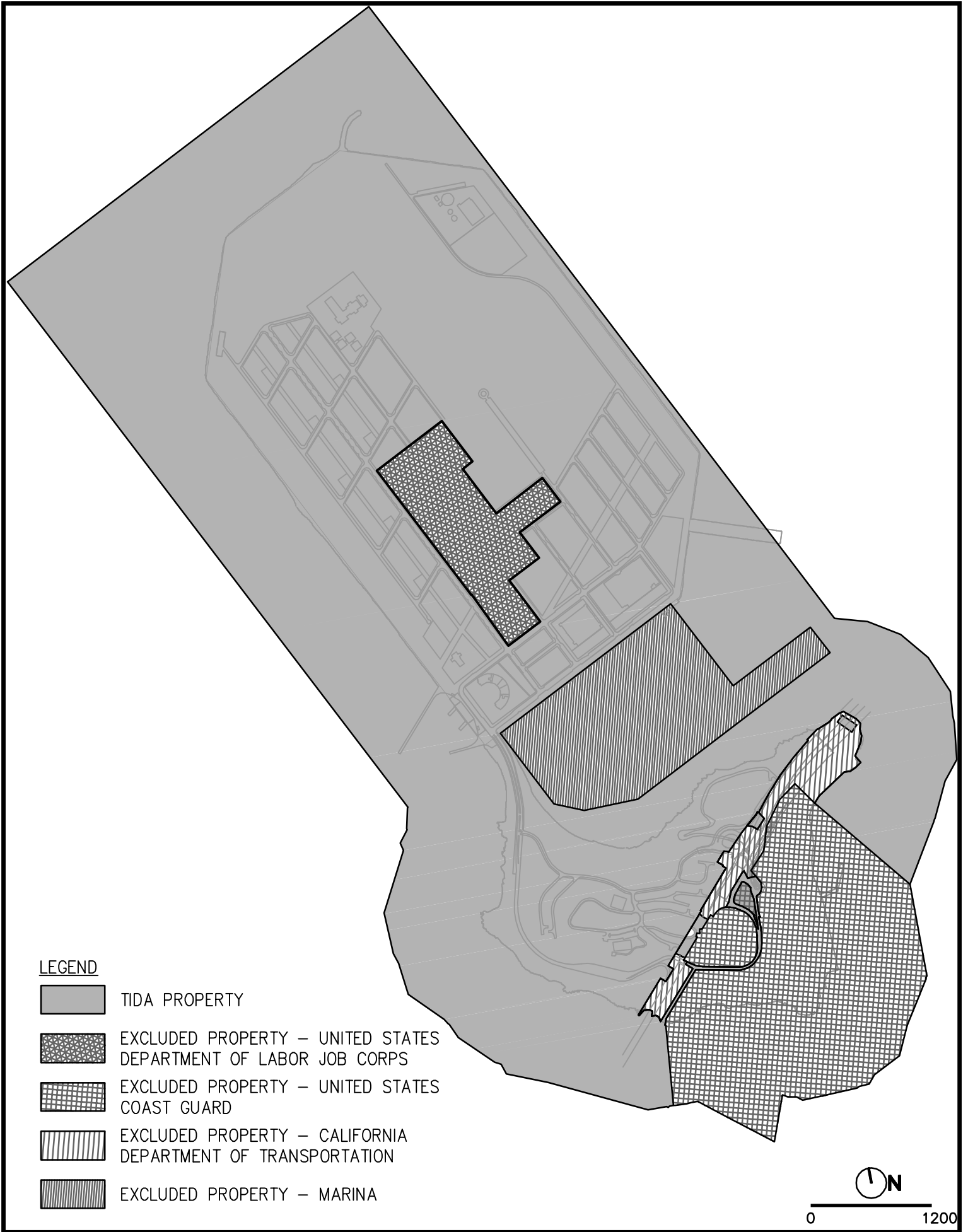
[Signature]  
Signature of Notary Public





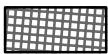

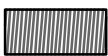
**Exhibit A**

**Project Site**

[Attached]



**LEGEND**

-  TIDA PROPERTY
-  EXCLUDED PROPERTY – UNITED STATES DEPARTMENT OF LABOR JOB CORPS
-  EXCLUDED PROPERTY – UNITED STATES COAST GUARD
-  EXCLUDED PROPERTY – CALIFORNIA DEPARTMENT OF TRANSPORTATION
-  EXCLUDED PROPERTY – MARINA



**EXHIBIT A: PROJECT SITE / EXCLUDED PROPERTIES**

**Exhibit B**

**Legal Description of Project Site**

[Attached]

Pacific Land Surveys  
June 27, 2011  
PLS Job No. 20110101-01

**Exhibit "B"**

**LEGAL DESCRIPTION**

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

All those lands comprised of portions of the lands commonly known as Treasure Island and Yerba Buena Island lying within the City and County of San Francisco, State of California described as follows:

That portion of the lands described in that certain Presidential Reservation of Goat Island (now Yerba Buena Island), dated November 6, 1850, lying northwesterly of Parcel 57935-1 as described in that certain Quitclaim Deed, recorded October 26, 2000, as Document Number 2000G855531, in the office of the Recorder of the said City and County of San Francisco (hereinafter referred to as Doc. 2000G855531);

Together with all of the underlying fee to Parcel 57935-5 as described in said Quitclaim Deed (Doc. 2000G855531) and all of the underlying fee to Parcel 57935-6 as described in said Quitclaim Deed (Doc. 2000G855531),

Also together with that portion of the tide and submerged lands in San Francisco Bay, relinquished to the United States of America by that certain act of the Legislature of the State of California by Statutes of the State of California of 1897, Chapter 81 (hereinafter referred to as Stat. 1897, Ch. 81);

Also together with all of the Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island as described in that certain Final Judgment of Condemnation, filed April 3, 1944, in the District Court of the United States in and for the Northern District of California, Southern Division, Case Number 22164-G (hereinafter referred to as Case 22164-G),

Also together with all of that portion of the lands described in that certain Presidential Reservation of Goat Island (now Yerba Buena Island), dated November 6, 1850, lying southeasterly of Parcel 57935-1 as described in that certain Quitclaim Deed, recorded October 26, 2000, as Document Number 2000G855531, in the office of the Recorder of the said City and County of San Francisco (hereinafter referred to as Doc. 2000G855531); excepting therefrom those lands shown as the Lands of the United States Coast Guard on that certain Record of Survey, entitled "Record of Survey #5923" recorded in Book DD of Maps at Pages 24-28 on April 28, 2010;

Also excepting therefrom, that portion of the said Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island (Case 22164-G), commonly referred to as the Job Corps



Center, Treasure Island, which was transferred to the United States Department of Labor by that certain document entitled "Transfer and Acceptance of Military Real Property", Dated March 3, 1998;

Also excepting therefrom, portions of: the Tidelands and Submerged Lands in San Francisco Bay known as Treasure Island as described in that certain Final Judgment of Condemnation, filed April 3, 1944, in the District Court of the United States in and for the Northern District of California, Southern Division, Case Number 22164-G (hereinafter referred to as Case 22164-G), and the tide and submerged lands in San Francisco Bay, relinquished to the United States of America by that certain act of the Legislature of the State of California by Statutes of the State of California of 1897, Chapter 81 (hereinafter referred to as Stat. 1897, Ch. 81); being more particularly described as follows: commencing at the southwest corner of the lands described above in Case Number 22164-G, said point being marked by a brass disk labeled "Goat", thence northerly along the westerly line of said lands North 26 degrees 51' 06" West 601.09 feet; thence leaving said line, North 63 degrees 08' 47" East 1173.50 feet to the True Point of beginning of this exception; thence along the following eight courses: North 26 degrees 51' 13" West 878.38 feet; North 63 degrees 08' 47" East 2121.50 feet; South 26 degrees 51' 13" East 1024.20 feet; North 63 degrees 08' 47" East 961.00 feet; South 26 degrees 51' 13" East 320.20 feet; South 63 degrees 08' 47" West 2391.50 feet; thence South 88 degrees 38' 47" West 543.80 feet; thence North 67 degrees 39' 13" West 306.35 feet to the True Point of Beginning of this exception.

Also excepting therefrom, that portion of the said Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat. 1897, Ch. 81), within the "Army Reservation, Occupied by U.S. Light House Service under Permit from Secretary of War dated May 27, 1872" as shown and described upon that certain map entitled "Plat of Army and Navy reservations on Yerba Buena (Goat) Island, San Francisco Bay, California";

And further excepting therefrom, that portion of the Tide and Submerged Lands in San Francisco Bay, relinquished to the United States of America (Stat. 1897, Ch. 81) which were transferred to the United States Coast Guard by that certain document entitled "Transfer and Acceptance of Military Real Property", Dated November 26, 2002.

As portions of said land are shown on those certain Records of Survey filed for record: July 15, 2003 in Book M of maps at pages 85 through 95, inclusive, and as 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 Legislature of the State of California, approved March 9, 1897 (Stat. Cal., 1897, p. 74) filed April 12, 1934 in Book N of Map at Page 14; and on April 28, 2010, in Book DD of Maps at Pages 24-28, entitled "Record of Survey #5923"; recorded in the Office of the Recorder of the City and County of San Francisco.

## Exhibit C

### **Project Approvals**

- Certification of Environmental Impact Report, State Clearinghouse No. 2008012105 (Planning Commission Motion No. 18325; TIDA Resolution No. 11-14-04/21)
- Development Agreement (Board of Supervisors Ordinance No. 95-11; San Francisco Municipal Transportation Agency Resolution No. 11-0059; San Francisco Public Utilities Commission Resolution No. Resolution No. 11-0068)
- Disposition and Development Agreement (TIDA Resolution No. 11-18-04/21; Board of Supervisors Ordinance No. 241-11)
- Design for Development (D4D) (Planning Commission Motion No. 18330)
- Interagency Cooperation Agreement (ICA) (TIDA Resolution No. 11-24-04/27; SFMTA Resolution No. 11-0059; SFPUC Resolution No. 11-0068)
- Amendments to the San Francisco General Plan, amending the Commerce and Industry Element, Community Facilities Element, Housing Element, Recreation and Open Space Element, Transportation Element, Urban Design Element, and Land Use Index, maps and figures in various elements, and by adopting and adding the Treasure Island/Yerba Buena Island Area Plan (Board of Supervisors Ordinance No. 97-11)
- Amendments to the San Francisco Planning Code by amending Sections 102.5 and 201 to include the Treasure Island/Yerba Buena Island districts; amending Section 105 relating to height and bulk limits for Treasure Island/Yerba Buena Island; adding Section 249.52 to establish the Treasure Island/Yerba Buena Island Special Use District (which incorporates by reference the Design for Development); adding Section 263.26 to establish the Treasure Island/Yerba Buena Island Height and Bulk District; and amending the bulk limits table associated with Section 270 to refer to the Treasure Island/Yerba Buena Island Height and Bulk District (Board of Supervisors Ordinance No. 98-11)
- Amendment to the Zoning Map of the City and County of San Francisco by adding new Sectional Map ZN14 to show the zoning designations of Treasure Island/Yerba Buena Island; adding new Sectional Map HT14 to establish the Height and Bulk District for Treasure Island/Yerba Buena Island; adding new Sectional Map SU14 to establish the Treasure Island/Yerba Buena Island Special Use District (Board of Supervisors Ordinance No. 96-11)
- Adopting CEQA Findings and a Mitigation Monitoring and Reporting Program (TIDA Resolution No. 11-15-04/21; Board of Resolution No. 246-11; Planning Commission Motion No. 18326; San Francisco Municipal Transportation Agency Resolution No. 11-0059; San Francisco Public Utilities Commission Resolution No. Resolution No. 11-0068)

- Adopting the Subdivision Code of the City and County of San Francisco for Treasure Island and Yerba Buena Islands (Board of Supervisors Ordinance No. 99-11)
- Amended and Restated Disposition and Development Agreement (TIDA Resolution No. 24-10-0313; Board of Supervisors Resolution No. 196-24)
- First Amendment to Development Agreement (Board of Supervisors Ordinance No. 93-24)
- Amendments to the San Francisco Planning Code to revise the Treasure Island / Yerba Buena Island Special Use District (SUD), to update the Treasure Island Bulk and Massing figure, to make the process for amendments to the Design for Development document more flexible, and to provide for additional circumstances that may authorize Minor Modifications to the standards in the SUD and Design for Development; revising the Zoning Map to change height districts in Treasure Island, to provide for five additional feet in certain areas, and to remove the “Special Height District” designation from two easements adjacent to Buildings 2 and 3 (Board of Supervisors Ordinance No. 94-24)
- Amendments to the Design for Development (D4D) (Planning Commission Motion No. 21542)

**Exhibit D**  
**Financing Plan**  
[Attached]

107121005.11

**Exhibit D**

**AMENDED AND RESTATED FINANCING PLAN  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

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**LIST OF SCHEDULES AND ATTACHMENTS**

Schedule 4.1(d).	Map of Stage 2
Attachment A.	Form of Acquisition and Reimbursement Agreement
Attachment B.	Expected Categories of Island Wide Costs



**AMENDED AND RESTATED FINANCING PLAN  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

This AMENDED AND RESTATED 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.

**1. OVERVIEW**

1.1 Project Purposes; Project Accounts

(a) 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**”):

(i) Ensure that the proposed Project is economically and fiscally feasible.

(ii) Ensure timely delivery of Infrastructure and Stormwater Management Controls to support the City’s delivery of housing, generally, and Affordable Housing Units, in particular.

(iii) 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 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 other tax and General Fund 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 otherwise set forth herein.

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

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

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

(vii) Provide mechanisms and Funding Sources that will allow Developer to maximize Developer’s IRR.

(viii) 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.

(ix) 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.

(x) Provide financing of the Housing Costs in the manner set forth in Section 3.6 and Section 3.7(c).

(xi) 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.

(b) 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:

(i) 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.

(ii) City to form requested IFDs and to approve IFPs for each IFD that provide for the issuance of IFD Debt that is consistent with the Funding Goals to pay Qualified Project Costs.

(iii) City to allocate and approve IFPs that provide for the application of 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.

(iv) City to take steps required to provide Alternative Financing to the Project as provided in this Financing Plan.

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

(c) Project Accounts.

(i) 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.

(ii) 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.

(d) 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.

## 1.2 Funding Sources for Project Costs

(a) 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 other Increment allocated to Qualified Project Costs pursuant to Section 3.7(c); 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**."

(b) Limited Public Obligation. Other than as set forth in this Financing Plan, including with respect to Alternative Financing, 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 without City's or Authority's express written consent, as applicable.

### (c) Developer Sources.

(i) 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 Developer procures.

(ii) Developer Construction Obligations. Developer acknowledges that the Developer Construction Obligations will not be affected if Project Costs exceed the actual Funding Sources.

### 1.3 Distribution of Net Cash Flow

#### (a) Implementation of Conveyance Agreement.

(i) 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.

(ii) 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.

(b) 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.

#### (c) Share of Net Cash Flow.

(i) 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.

(ii) 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.

(iii) 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’s 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 (per the calculation methodology provided for in Exhibit DD to the Conveyance Agreement) (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.

(iv) 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’s 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**”), such that the share of Net Cash Flow above the IRR threshold of 25% to the Navy, Authority, and Developer are 35%, 15%, and 50%, respectively, during the Term, and 0%, 50%, and 50%, respectively, after the Term.

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

(d) 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.

(e) Reconciliation of Final Conveyance Agreement IRR.

(i) 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.

(ii) 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).

(iii) 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.

(iv) 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.

(v) 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.

(f) Reconciliation of Final IRR.

(i) 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.

(ii) 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.

(iii) 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.

(g) 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.

(h) 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.

(i) Compliance with Conveyance Agreement. 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.

(j) 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, 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.

(k) 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.



#### 1.4 Reimbursements of Additional Consideration

(a) 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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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);

(v) 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

(vi) 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).

### 1.5 Consultants

(a) 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, property insurance providers, 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.

(b) 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.

### 1.6 Recordkeeping

#### (a) Annual Reports.

(i) 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 Stormwater Management Controls 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.

(ii) 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.

(iii) 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.

(iv) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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 Public Trust Parcels in order to ensure that they are used only for purposes consistent with this Financing Plan and applicable law.

1.7 Authority's Unreimbursed 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.

## **2. COMMUNITY FACILITIES DISTRICT FINANCING**

### **2.1 Formation of CFDs**

(a) 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.

(b) 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.

### **(c) Petition**

(i) 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.

(ii) 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.

(d) 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.

(e) 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 and Stormwater Management Controls. 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 and Stormwater Management Controls 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 and Stormwater Management Controls that will be owned or operated by such Governmental Entity other than Authority.

(f) 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.

## 2.2 Scope of CFD-Financed Costs

(a) 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.

## 2.3 Parameters of CFD Formation

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(j) Use of Remainder Taxes.

(i) 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 but in any case no later than October 1 of each year, all Remainder Taxes for such CFD will be deposited as set forth in clause (ii).

(ii) 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, in the following order of priority, (1) for the period specified in the definition of Stage 2 Contribution, to fund all or any portion of the Stage 2 Contribution annually, and (2) 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.

(iii) 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, in the following order of priority, (1) for the period specified in the definition of Stage 2 Contribution, to fund all or any portion of the Stage 2 Contribution annually, and (2) 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, in the City's discretion, (1) to pay debt service on and replenish debt service reserve funds for Alternative Financings, including funding all or any portion of the Stage 2 Contribution annually, and (2) to finance Additional Community Facilities or for any other use authorized by the CFD Act.

(k) 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 on CFD Bonds.

(l) 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 without the written consent of the Authority. 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.

(m) 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.

(n) 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.

## 2.4 Issuance of CFD Bonds

(a) 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.

(b) 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.

(c) 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.

(d) 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. Each issue of First Tranche CFD Bonds will be structured with a debt service coverage ratio that maximizes the proceeds of First Tranche CFD Bonds but is consistent with sound municipal financing practices to the City's reasonable satisfaction, based on calculations, explanations, and other substantial evidence provided by Developer.

(e) 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.

(f) 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.

## 2.5 Use of Proceeds

(a) 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(e), outstanding 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 those Additional Community Facilities authorized pursuant to Section 2.8(c).

(b) Qualified Project Costs; Additional Community Facilities. By this Financing Plan, City covenants to use 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 covenant, City shall levy Project Special Taxes in each Fiscal Year in strict accordance with the applicable RMA and this Financing Plan.

## 2.6 Miscellaneous CFD Provisions

(a) 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.

(b) Maintaining Levy of CFD Financing. Under section 3 of article XIII C 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 XIII C 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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 at least 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.

(i) 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.

## 2.7 Ongoing Park Maintenance

(a) 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, in the case of each of clauses (ii)(A), (B) and (C), to the extent such amounts are not committed to the payment of Ongoing Park Maintenance during the current Maintenance Period.

(b) 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.

(c) Calculation of Developer Maintenance Payment. Authority shall annually calculate the Developer Maintenance Payment on the day following each Principal Payment Date for such CFD on which Remainder Taxes are transferred to the Remainder Taxes Holding Account.

(i) If, on the date of calculation, the amount on deposit in the Ongoing Maintenance Account that is available to pay 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 for the current Maintenance Period, 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 for the current Maintenance Period, (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.

(ii) 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 that is available to pay Ongoing Park Maintenance during the current Maintenance Period, 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.

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

(i) (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

(ii) the Maintenance Account Balance.

(e) 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. The Maintenance Account Balance shall not increase at any time after the account is first established, other than as a result of the accrual of interest earnings as set forth herein.

(f) Time of Payment. Developer shall make the Developer Maintenance Payment by the later of (i) November 1 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.**"

(g) 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:

(i) 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.

(ii) The Conditional Maintenance Tax may only be levied in the Fiscal Year in which City receives written notice from Authority that a Maintenance Default has occurred.

(iii) The Conditional Maintenance Tax may only be levied once in a Fiscal Year.

(iv) 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.

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

(vi) 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.

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

(h) 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.

## 2.8 CFD Limitations

(a) 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:

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

(ii) 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

(iii) 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.

(b) The CFD Conversion Date shall be calculated separately for each CFD.

(c) 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.

(d) City and 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.

(e) 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, including, but 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 vested in Developer with respect to the decision to fund Additional Community Facilities from CFD Bonds prior to the CFD Conversion Date for each CFD pursuant to Section 2.8(c), if, prior to the CFD Conversion Date for a CFD, sea levels in the waters at the perimeter of the Project Site rise by more than sixteen (16) inches from the levels in existence on the Reference Date, as defined in the Infrastructure Plan, Developer and City will finance Future Sea Level Rise Improvements from First Tranche CFD Bonds for the CFD.

(f) 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).

### **3. INFRASTRUCTURE FINANCING DISTRICT FINANCING**

#### **3.1 Formation of IFDs**

(a) 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. For the avoidance of doubt, establishing an IFD includes annexing territory to an existing IFD. 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.

(b) 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. The IFD shall include separate Project Areas, as requested by Developer in writing.

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

(d) 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. Developer and City agree that, for an IFD for which a Statement of Indebtedness is required under the IFD Act or otherwise, (i) the IFP will include a declaration that the IFD's obligation to use Net Available Increment for the purposes specified in this Financing Plan constitutes an indebtedness of the IFD and (ii) the IFP will provide that the IFD will include the amount of such indebtedness in each applicable annual Statement of Indebtedness for the IFD.

### 3.2 Scope of IFD-Financed Costs

(a) Authorization. An IFD may finance only Qualified Project Costs that are financeable under the IFD Act.

(b) 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.

### 3.3 Issuance of IFD Debt

(a) Issuance. Subject to Board of Supervisors Approval and Sections 4.4 and 4.5, City will cause the IFP for each IFD to provide for the issuance of 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 an IFD issue IFD Debt, specifying requested issuance dates, amounts, and main financing terms. Following each 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 Developer's request and the Funding Goals. Each IFP will provide that an IFD may not issue IFD Debt without first receiving a written request from Developer.

(b) 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 will have sufficient Net Available Increment to pay administrative expenses and is unlikely to need the Conditional City Increment to pay debt service on the IFD Debt.

(c) Term. Unless Developer and City agree otherwise, the IFP for each IFD will provide for IFD Debt that 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.

(d) IFD Debt Proceeds. Subject to Tax Laws and the IFD Act, the proceeds of each IFD Debt 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.

(e) 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. For each IFD, the IFP will provide that, after first paying or setting aside amounts needed for debt service due during such Fiscal Year on IFD Debt for such IFD secured by or payable from Net Available Increment, such IFD shall repay the City out of Net Available Increment for any Conditional City Increment used to pay debt service on IFD Debt for such IFD as set forth in this Section 3.3(e) 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. For the avoidance of doubt, the Conditional City Increment shall not be available to fund any portion of the Stage 2 Contribution.

(f) Subordination. For each IFD, the IFP will provide that, at the request of Developer, the IFD 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.

### 3.4 Pledge of Net Available Increment

(a) 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 for such IFD 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 for such IFD. 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 providing in the IFP for each IFD for the filing of 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 neither the City nor the IFD will 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 (with such covenant included in the IFP for each IFD). The City and the Developer agree that, as an Alternative Financing, the Certificates of Participation constitute a Public Financing and, consequently, the amendments to Section 3.5 of the Original Financing Plan set forth herein are consistent with Sections 3.01 and 3.02 of that certain Subordinate Pledge Agreement, dated as of May 29, 2015, executed by the City for the benefit of the United States of America.

### 3.5 Budget Procedures; Use of Net Available Increment

(a) 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); (B) the amount of any debt service on IFD Debt secured by a pledge of or expected to be paid from Net Available Increment and the amount required to replenish debt service reserve funds for such Public Financings; (C) the amount required to repay the City for the use of Conditional City Increment; (D) the amount payable under the Subordinate Pledge; (E) the amount of the Stage 2 Contribution expected to be funded by Net Available Increment; and (F) the amount required to pay administrative expenses of the IFD. 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.

(b) City Budget and IFD Budgets. Subject to the IFD Act and the Funding Goals, and based upon the information provided by Developer, City shall for each IFD:

(i) budget for the allocation of Net Available Increment described in this Financing Plan, and the expenditure of the expected Net Available Increment only to: (A) pay debt service due in the next Fiscal Year on any applicable IFD Debt incurred or to be incurred to pay Qualified Project Costs and replenish debt service reserve funds for such IFD Debt; (B) repay the City for any Conditional City Increment used to pay debt service on IFD Debt for such IFD in the manner set forth in Section 3.5(d) and to the extent set forth in Section 3.3(e); (C) fund all or any portion of the Stage 2 Contribution as set forth in this Financing Plan, (D) pay any amount payable under the Subordinate Pledge; (E) pay IFD administrative expenses; and (F) finance Qualified Project Costs; and

(ii) allocate Net Available Increment as set forth in this Financing Plan, and cause the IFP to contain provisions for the IFD to 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.

(c) Purpose of Pledge. Developer and City shall cause the IFP for each IFD to require all Net Available Increment in each Fiscal Year to be used as provided in this Financing Plan, and City shall prepare its annual budget and cause the IFDs to prepare their annual budgets to reflect the required use of Net Available Increment 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.

(d) Use of Net Available Increment. For each IFD, the IFP will provide for the use of Net Available Increment to pay debt service and replenish any debt service reserve fund for indebtedness as defined therein, repay the City for any Conditional City Increment used to pay debt service on IFD Debt for such IFD as set forth in Section 3.3(e), pay administrative expenses of the IFD, and pay for Qualified Project Costs. In furtherance of the preceding sentence, the Developer and City agree that the Net Available Increment shall be used first, to pay or set aside amounts needed for debt service due on IFD Debt for such IFD secured by or payable from Net Available Increment during Fiscal Year and replenish related debt service reserve funds, second, to repay the City for any Conditional City Increment used to pay debt service on IFD Debt for such IFD, third, with respect to the 82.5% of Net Available Increment that is not dedicated to fund Housing Costs in the IFP, to fund all or any portion of the Stage 2 Contribution as set forth in this Financing Plan during the period specified in the definition of Stage 2 Contribution, fourth, to pay any amounts due to the Navy under the Subordinate Pledge, fifth, to pay for IFD administrative expenses, and sixth, to finance, or accumulate funds 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 refund or defease before maturity a Public Financing that financed Qualified Project Costs.

### 3.6 Housing Costs

(a) Housing Proceeds. For each IFD, City and Developer agree that the IFP will provide for a portion of the IFD Proceeds for such IFD in any Fiscal Year to be applied to finance the Housing Costs in the following manner:

(i) If, in the written opinion of bond counsel to the IFD, 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 reserved and 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

(ii) If, in the written opinion of bond counsel to the IFD, 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 clause (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.

(b) Combination of Financing Housing Costs. If, in the written opinion of bond counsel to the IFD, 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 each IFD as to the implementation and priority of clauses (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 clause (a)(i), and (B) the amounts payable from Payment Requests pursuant to clause (a)(ii).

### 3.7 Miscellaneous IFD Provisions

(a) Reassessment Notice Requirements. The City has agreed to establish the IFD and provide tax increment financing for Qualified Project Costs at Developer's request, and the Developer acknowledges and agrees that reductions in the assessed value of Taxable Parcels in the IFD could materially affect the IFD's ability to pay scheduled debt service on the IFD Debt when due and constrain the City's willingness to approve the issuance of IFD Debt. Accordingly, the Developer hereby agrees that, until the earlier of (A) the date on which (i) there are no authorized uses under the IFP of the Net Available Increment or Conditional City Increment generated in the IFD and neither the Developer nor the City expects there to be any further such

authorized uses and (ii) the City has been repaid for the use of Conditional City Increment in accordance with the IFP and (B) the final date for receiving Net Available Increment or Conditional City Increment under the IFP, the Developer will inform the Controller in writing of its intent to initiate a proceeding (a “**Reassessment Proceeding**”) under the California Revenue and Taxation Code to reassess the value of the parcels owned by the Developer within the IFD at least 90 days prior to initiating the Reassessment Proceeding. Any such notice shall identify the Developer’s opinion of the value of the property. The Developer acknowledges that the City is requesting prior written notice so the Controller can inform the members of the Board of Supervisors of the Developer’s intent to initiate a Reassessment Proceeding and the potential impact on outstanding IFD Debt. If the Controller concludes that the Reassessment Proceedings may materially impact outstanding IFD Debt, the Controller may also recommend that the City or IFD provide a voluntary notice of the Developer’s intent to initiate a Reassessment Proceeding on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access site. In addition, the Developer acknowledges and agrees that any decision by the Developer to initiate a Reassessment Proceeding will be accounted for in the City’s risk analysis in connection with the issuance of IFD Debt in the future.

(b) Additional Reserve Fund Authority. In connection with the issuance of any IFD Debt, the City and the IFD shall establish one or more debt service reserve funds. The amount of such reserve funds shall be determined by the City and the IFD after consultation with Developer, and shall be based upon the Funding Goals, the advice of Authority or City staff and consultants, and market conditions or conditions affecting the property in the Project Site (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation). Such reserve funds may be funded with proceeds of IFD Debt, reserve fund earnings in accordance with Section 3.7(b) and Net Available Increment in accordance with Section 3.5(d).

(c) 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 the debt service fund held by the Trustee under the Indenture.

(d) Material Changes to the IFD Act. 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 DDA, the City DA, and any existing IFD. In the event of any change to the IFD Act that occurs after the Reference Date that results in Increment other than Net Available Increment becoming available for allocation to an IFD, City may allocate such additional Increment to an IFD and may provide in the IFP for such IFD that such additional Increment may be used by the IFD as follows: (i) first, to finance Housing Costs and increase the then-effective Minimum Affordable Percentage in the manner set forth in Articles 3 and 9 of the Housing Plan and to finance additional Qualified Project Costs that are required to receive additional increment as a result of the change in the IFD Act; and (ii) second, to pay Qualified Project Costs.

(e) If at any time during the term of this Agreement the City reasonably concludes that the provisions of this Article III as it relates to the allocation by the City of Net Available Increment or the IFP of an IFD would violate applicable provisions of State law, or if a court of applicable jurisdiction concludes that the provisions of this Article III as it relates to the allocation by the City of Net Available Increment would or the IFP of any IFD does violate applicable provisions of State law, City and Developer shall meet and confer about available alternatives.

### 3.8 IFDs and Net Available Increment Upon Termination

(a) 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 and each IFD a Termination Notice providing the details of the termination and whether or not the termination was due to a Selected Default.

(b) 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 so that such Island Wide Costs of Developer may be financed as set forth in this Section 3.8. The IFD formed over any part of the Project Site for each Other Developer following receipt of a Termination Notice for a Selected Default shall have no such obligation.

(c) Non-Selected Defaults. If 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 and each IFD, the IFD shall distribute the IFD Proceeds as follows:

(i) 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.

(ii) 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.

(iii) Upon the occurrence and during the continuance of a High IRR Period, Authority may provide a written notice to City and each IFD 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 IFD will 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 and each IFD indicating that the High IRR Period has ended, and immediately upon receipt of such written notice, the suspension shall end and the IFD shall resume making payments to Developer of IFD Proceeds pursuant to clause (ii).

(iv) 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 the IFDs and Authority.

(d) 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 the IFD and the City, the IFD shall distribute the IFD Proceeds as follows:

(i) 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.

(ii) 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.

(e) 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.

### 3.9 Net Available Increment Under Certain Situations

(a) 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 and each IFD indicating that there is a Higher IRR Period. For each IFD, upon receipt of the written notice about the Higher IRR Period, the IFD shall suspend distribution of Net Available Increment remaining after payment of debt service due on

IFD Debt and any other Public Financing. For each IFD, immediately upon the conclusion of a Higher IRR Period, Authority shall provide a written notice to City and the IFD indicating that the Higher IRR Period has ended, and immediately upon receipt of such written notice, the suspension shall end and the IFD shall resume making payments to Developer of Net Available Increment in the manner set forth in this Financing Plan.

(b) 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 Developer under the DDA, Authority may provide a written notice to City and the IFD indicating that an Event of Default has occurred, and the IFD 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. The IFD 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 and the IFD indicating that the Event of Default has been cured, and immediately upon receipt of such written notice, the suspension shall end and the IFD shall resume making payments to Developer of Net Available Increment in the manner set forth in this Financing Plan.

(c) 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), the IFD 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 do not adversely affect the tax-exemption of the interest on any IFD Debt:

- (i) Installment Payments then due and unpaid; then
- (ii) 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
- (iii) Payment of any Financial Obligations that would have been the obligation of Developer; then
- (iv) In any combination: (A) facilities benefitting the Project or the Project Site; or (B) payment of the Housing Costs (including any affordable housing subsidy).

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

##### **4.1 Alternative Financing**

(a) 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 or otherwise) that affects the Funding Sources: (i) before Developer’s completion of the Infrastructure and Stormwater Management Controls; or (ii) before Developer’s full reimbursement for Project Costs. These other methods (collectively, “**Alternative Financing**”) may include any municipal debt financing vehicle then available under applicable law, including tax-exempt bonds, taxable bonds, tax-credit bonds, certificates of participation, and federal or State loans incurred by Authority, the City, or a joint powers authority. As set forth in this Financing Plan, as it may be amended from time to time, such municipal debt financing vehicles may be secured by Net Available Increment or Project Special Taxes, special assessments or fees on Taxable Parcels of commercial property in the Project Site through a community taxing district formed by City ordinance, or lease revenues in the case of Certificates of Participation. 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:

(i) the Qualified Project Costs to be financed with the proceeds of the Alternative Financing;

(ii) if the Qualified Project Costs relate to construction, the Completion date or estimated Completion date for the related Infrastructure and Stormwater Management Controls;

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

(iv) the Alternative Financing.

(b) Implementation. Following Developer’s request for Alternative Financing, Developer and Authority will meet with the Controller’s Office of Public Finance and 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 Section 1.2(b) or (ii) proposes to tax or assess Exempt Parcels.

(c) Financing.

(i) 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.

(ii) 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.

(d) Stage 2 Alternative Financing. The Parties acknowledge that as of the A&R Reference Date, it is the intent of the Parties that the City will provide Alternative Financing to the Project in accordance with this Section 4.1(d). The Alternative Financing provided under this Section 4.1(d) is referred to, collectively or individually, as “**Stage 2 Alternative Financing**”.

(i) The purpose of the Stage 2 Alternative Financing is to accelerate the development of the property shown on the map attached hereto as Schedule 4.1(d) (“**Stage 2**”). The property in Stage 2 is a portion of the property subject to Sub-Phase Application 3 dated March 21, 2019, and approved by the Authority on April 12, 2019. The Stage 2 Alternative Financing is intended to facilitate the continuation of development of Stage 2 without interruption and to facilitate the delivery of housing units, both affordable and market rate, in furtherance of critical policy goals of the City.

(ii) The Stage 2 Alternative Financing shall be used solely to finance reimbursement to the Developer for its expenditures on the Qualified Project Costs related to development within the boundaries of Stage 2, or as required to serve development within the boundaries of Stage 2, that are eligible to be financed by CFD Bonds or IFD Debt the interest on which is excluded from gross income for federal income tax purposes (“**Stage 2 Qualified Project Costs**”). Stage 2 Alternative Financing is not intended to finance Qualified Project Costs related to any portion of the property subject to Sub-Phase Application 3 other than Stage 2, or Qualified Project Costs related to any other future Project Sub-Phases, except as required to serve development within the boundaries of Stage 2. Unless otherwise authorized pursuant to this Article 4, the City’s General Fund shall not be available to pay any Alternative Financing other than the Stage 2 Alternative Financing. The City, the Authority and the Developer have agreed that the Stage 2 Alternative Financing represents financial assistance for Stage 2 that will not be available for any other property within Sub-Phase Application 3 unrelated to Stage 2, or for any other future Project Sub-Phases.

(iii) The Stage 2 Alternative Financing is expected to be structured as lease certificates of participation that will represent lease payments payable by the City from its General Fund revenues (“**Certificates of Participation**”), although the City reserves the discretion for the Stage 2 Alternative Financing to be structured as other public financing vehicles selected by the City that are not secured by a pledge of Project Special Taxes or Net Available Increment. Although the Certificates of Participation will represent lease payments that are appropriated from the City’s General Fund, the City expects that, except for the Stage 2 Contribution, the lease payments will be paid from General Fund revenues derived from the Project that would not exist but for the Project.

(iv) The City and Developer anticipate that the Stage 2 Alternative Financing will generate a maximum of \$115 million of net proceeds to reimburse the Developer for Stage 2 Qualified Project Costs. Unless the Board

of Supervisors approves otherwise, the Stage 2 Alternative Financing will be executed and delivered in no less than three separate tranches of Certificates of Participation, with no more than one tranche in a Fiscal Year. The City and the Developer currently anticipate that the Stage 2 Alternative Financing will be issued in three separate tranches of approximately \$50 million, \$50 million and \$15 million; provided, however, the City reserves the right in its discretion to determine the timing, principal amount and number of tranches based on economic efficiency, the policies described in Section 1.1(a)(xi) and the Developer's ability to spend the financing proceeds on Stage 2 Qualified Project Costs within two years. The City will cause the first tranche of Certificates of Participation, and subsequent tranches, to be executed and delivered only after the ten-year City Capital Plan that is updated after the A&R Reference Date demonstrates capacity for, and incorporates, the Stage 2 Alternative Financing in the COP program. The City will structure the Certificates of Participation so that lease payments will not be appropriated from the City's General Fund in Fiscal Year 2024-25 or Fiscal Year 2025-26.

(v) Each tranche of the Stage 2 Alternative Financing shall be implemented through a separate legislative package submitted to, and subject to the approval of, the Board of Supervisors. Each legislative package will describe the following:

(A) the legal structure of the proposed Stage 2 Alternative Financing (e.g., Certificates of Participation);

(B) the maximum principal amount of the proposed Stage 2 Alternative Financing and the net proceeds expected to be generated to reimburse the Developer for Stage 2 Qualified Project Costs;

(C) the specific Stage 2 Qualified Project Costs that are expected to be financed by the proposed Stage 2 Alternative Financing and the expected timing of the Developer's expenditures on those Stage 2 Qualified Project Costs;

(D) the transaction's compliance with Section 10.62 of the City's Administrative Code; and

(E) the performance milestones to be met by the Developer before approval by the Board of Supervisors of a subsequent Stage 2 Alternative Financing.

Before any Stage 2 Contribution is made, the Board of Supervisors shall have approved the issuance of the first tranche of Certificates of Participation. The City shall not cause the initial Stage 2 Alternative Financing to be executed and delivered unless (y) the Board of Supervisors, as legislative body with respect to the CFD and as legislative body of the IFD, has approved the obligation to make the Stage 2 Contributions described in this Financing Plan (z) the City and the

IFD, as applicable, have complied with applicable requirements of the Indentures for outstanding CFD Bonds and IFD Debt.

(vi) For the Stage 2 Alternative Financing(s) structured as Certificates of Participation, the Authority, the City and the Developer have agreed that the following Funding Sources shall be available (but not pledged) as described in this Financing Plan to fund the annual amount of the Stage 2 Contribution: (a) the Remainder Taxes in the manner described in Section 2.3(j); and (b) the 82.5% portion of Net Available Increment that is not dedicated in the IFP to pay for Housing Costs in the manner described in Section 3.5(d).

(vii) The City reserves the right to structure the prepayment provisions of the Stage 2 Alternative Financing in its sole discretion.

(viii) Developer hereby agrees that it shall not be entitled to, nor shall City or Authority pay, any Net CFD Proceeds, Project Special Taxes, IFD Proceeds or Net Available Increment to reimburse Developer for any Stage 2 Qualified Project Costs for which Developer was previously reimbursed from Stage 2 Alternative Financing proceeds.

(ix) At such time as all Qualified Project Costs incurred by Developer have been fully financed from Public Financing in accordance with this Financing Plan, the City may use any remaining Funding Sources that otherwise would have been committed toward Qualified Project Costs had there not been any Stage 2 Alternative Financing to pay for costs of public capital facilities that are eligible for financing under the Tax Laws (if applicable), CFD Act or IFD Act and otherwise would have been paid with General Fund or Authority revenues.

(x) The Parties agree that between the A&R Reference Date and the date on which the Developer has completed the improvements contemplated by the Street Improvement Permit for Stage 2 (the “**Stage 2 SIP Work**”), the Developer will spend all Gross Revenues from (i) land sales and (ii) Public Financing proceeds on Project Costs; provided, however, that the payment of interest, fees, or principal of debt being used to finance the Project is an eligible use of such revenues. For purposes of this subsection (x), “completed” shall mean satisfaction of any one of the following: (1) issuance of a notice of completion for the Stage 2 SIP Work by the Department of Public Works; (2) the date that is 60 days after Developer records a Notice of Completion pursuant to California Civil Code § 8190 covering the Stage 2 SIP Work without the filing of a mechanics lien, or if a lien is filed within such time, bonds have been provided to secure such liens in a form and amount required by law to cause any such lien to be removed from the applicable portion of the Project Site; (3) completion of at least 90% of the Stage 2 SIP Work (as evidenced by the inspections under the Acquisition and Reimbursement Agreement) with bonds posted for at least 150% of the remaining cost to complete the Stage 2 SIP Work; or (4) issuance of a

Certificate of Completion by the Authority pursuant to Article 9 of the DDA for the Stage 2 SIP Work.

(xi) The City shall not increase the coverage ratio for, or reduce the sizing of an issue of, First Tranche CFD Bonds for the purpose of ensuring that there will be sufficient Remainder Taxes to fund all or any portion of the Stage 2 Contribution from Remainder Taxes. The City shall not increase the coverage ratio for, or reduce the sizing of an issue of, IFD Debt for the purpose of ensuring that there will be sufficient Net Available Increment to fund all or any portion of the Stage 2 Contribution from Net Available Increment. Instead, the City and the Developer agree that CFD Bonds and IFD Debt will be structured in accordance with Sections 2.4(d) and 3.3(b), respectively.

#### 4.2 Formation and Issuance Alternatives

(a) 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.

(b) 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 or an IFD, 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.

#### 4.3 Grants

(a) Cooperation. Authority and Developer will work together to seek appropriate Project Grants for the Project.

(b) 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).

(c) 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.

#### 4.4 Provisions Applicable To All Public Financings

(a) 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 Stormwater Management Controls 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, Stormwater Management Controls, 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.

(b) Financing Temporarily Excused. City and each IFD 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:

(i) 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;

(ii) Developer is in Material Breach under the DDA;

(iii) Developer fails to cooperate reasonably with Authority or the City as necessary to implement Public Financing consistent with this Financing Plan;

(iv) in the judgment of Authority, City, or an IFD, 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

(v) 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 (“**Underwriter Force Majeure**”).

(c) 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 and Stormwater Management Controls construction financing:

(i) to the extent that the costs are commercially unreasonable as of the date that the payment obligation was incurred;

(ii) 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

(iii) 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 and Stormwater Management Controls 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.

(d) 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.

(e) 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.

#### 4.5 Terms of the Public Financings

(a) 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 and each IFD, as applicable, will determine the final terms in their 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.

(b) 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.

(c) Tax-Exempt or Taxable. Developer and City shall cooperate, and the IFD will cooperate with Developer, to maximize the tax-exempt treatment of any Public Financing, but Developer and City or an IFD, as applicable, may agree to issue taxable Public Financings.

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

#### 4.6 Reimbursements for Qualified Project Costs

(a) Limited Reimbursement. Developer, City, and Authority acknowledge that:

(i) 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;

(ii) Developer may be required to begin paying Project Costs before Funding Sources to reimburse Developer are available;

(iii) 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;

(iv) 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

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

(b) Acquisition of Infrastructure and Stormwater Management Controls. Developer, City, and Authority acknowledge that:

(i) Developer may be constructing Infrastructure and Stormwater Management Controls before Funding Sources that will be used to acquire it are available;

(ii) The Department of Public Works will inspect Infrastructure and Stormwater Management Controls 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;

(iii) Infrastructure and Stormwater Management Controls may be conveyed to and accepted by the City, Authority, or other Governmental Entity before the applicable Payment Requests are paid in full;

(iv) If the City, Authority, or other Governmental Entity accepts Infrastructure and Stormwater Management Controls 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 and Stormwater Management Controls 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

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

**5. INTENTIONALLY OMITTED**

**6. MISCELLANEOUS PROVISIONS**

6.1 Interim Lease Revenues

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

(i) 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

(ii) On June 30 of each Fiscal Year, Authority will apply any remaining Interim Lease Revenues to any Installment Payment then due and unpaid unless otherwise waived, tolled or agreed by the Navy; then

(iii) 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 unless otherwise waived, tolled or agreed by the Navy; then

(iv) 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.

(b) 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 and Stormwater Management Controls 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.

## 6.2 Marina Revenues

(a) Use of Marina Revenues. Marina Revenues shall be used by Authority to pay Authority Costs.

(b) 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).

## 6.3 Key Money

(a) 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.

(b) 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)

6.4 Inconsistencies with the CFD and the IFD. The Reference Date of the original Financing Plan that has been amended and restated as set forth herein (the “**Original Financing Plan**”) occurred prior to the formation of the CFD and the IFD. Since such Reference Date, the Board of Supervisors undertook proceedings for the CFD, including various annexations into the CFD (collectively, the “**CFD Proceedings**”) and proceedings for the IFD, including adopting and approving the IFP and conducting post-formation change proceedings (collectively, the “**IFD Proceedings**”). Except as set forth in this paragraph, the Original Financing Plan has not been amended to describe the CFD or the IFD as formed. In the event of any inconsistency between the terms of this Financing Plan and the CFD Proceedings or the IFD Proceedings, the CFD Proceedings or the IFD Proceedings, as applicable, shall govern. Moreover, the City and the Developer agree that the amendments to the Original Financing Plan contained in this Agreement are consistent with and authorized by the IFP. As used herein, phrases such as “the IFP will provide” or “cause the IFP to contain” when referencing the changes made by this Agreement are not intended to require, and do not require, the amendment to the IFP, but rather indicate that the provisions of this Agreement are consistent with the IFP.

## 7. INTERPRETATION; DEFINITIONS

### 7.1 Interpretation of Agreement

(a) DDA and City DA. 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.

(b) 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.

## 7.2 Defined Terms

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

“**A&R Reference Date**” is defined in the DDA.

“**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 Stormwater Management Controls 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.

“**Additional Community Facilities**” means any public facilities that are contemplated to 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.

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

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

“**Affordable Housing Unit**” 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.

“**Certificates of Participation**” is defined in Section 4.1(d).

“**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 (Government 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 Mello-Roos Community Facilities Districts, approved by Resolution No. 387-09, adopted on October 6, 2009, and as thereafter amended from time to time.

“**CFD Proceedings**” is defined in Section 6.4.

“**Change In Law**” means legislation enacted by the Congress of the United States or 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 \$0.08 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 Amended and Restated 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 June 30 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 and Stormwater Management Controls; (b) Improvements pursuant to the Parks and Open Space Plan; and (c) Required Improvements.

**“Developer Fiscal Year”** means the fiscal year period for Developer, which currently commences on December 1 of any year and ends on the following November 30.

**“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.

**“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 City, 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) issued prior to the applicable CFD Conversion Date and 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 principles.

“**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 and Stormwater Management Controls 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%.

“**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 and Revitalization Financing District Act (Government Code § 53369 et seq.), as amended from time to time.

“**IFD Debt**” means any bonded indebtedness that an 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 proceeds of IFD Debt to be used to finance Qualified Project Costs.

“**IFD Proceedings**” is defined in Section 6.4.

“**IFD Proceeds**” means, in any Fiscal Year, for an IFD, the cumulative amount of (i) the proceeds of IFD Debt for such IFD and (ii) the Net Available Increment generated in such Fiscal Year that are not used to (A) pay debt service on and replenish debt service reserve funds for any IFD Debt for such IFD, (B) repay the City for any Conditional City Increment used to pay IFD Debt for such IFD in the manner set forth in Section 3.5(d) and to the extent set forth in Section 3.3(e), (C) except to the extent IFD Proceeds are used for the purposes provided in Section 3.6, fund the Stage 2 Contribution as set forth in this Financing Plan, (D) pay amounts due under the Subordinate Pledge; and (E) pay administrative expenses of the IFD.

“**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 Units**” 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”** is defined in 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 Annual Stage 2 Lease Payment”** means, as of the date of calculation, the sum of (i) the maximum annual lease payments evidenced by the Certificates of Participation after the execution and delivery of the final tranche of the Certificates of Participation that are due in a Fiscal Year and (ii) the estimated annual fees related to the Certificates of Participation that are due in a Fiscal Year and appropriated by the City from the General Fund along with annual lease payments related to the Certificates of Participation, including, but not limited to, the costs of insuring the leased asset and trustee fees.

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

**“Minimum Affordable Percentage”** is defined in the Housing Plan.

**“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, \$0.567 of every dollar of Increment (which amount will come from Increment that would have otherwise been allocated to City). Net Available Increment does not include Conditional City Increment.

**“Net Cash Flow”** means Gross Revenues received by Developer from the Project less Development Costs paid by 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 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 or the compensation paid to Authority with respect to the sale of such Unconveyed Property, 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 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.

**“Original Financing Plan”** is defined in Section 6.4.

**“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.

**“Public Trust Parcels”** 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.

**“Reassessment Proceeding”** is defined in Section 3.7(a).

**“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”** means the “Original Reference Date” as 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).

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

**“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 of Net Cash Flow generated by the Project in excess of a Developer 22.5% IRR, as described in Section 1.3.

**“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 issued after the CFD Conversion Date and 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).

**“Stage 2”** is defined in Section 4.1(d).

**“Stage 2 Alternative Financing”** is defined in Section 4.1(d).

**“Stage 2 Qualified Project Costs”** is defined in Section 4.1(d).

**“Stage 2 Contribution”** means, beginning in the first Fiscal Year in which in the initial tranche of Certificates of Participation is executed and delivered and continuing through the Fiscal Year in which the Stage 2 Contribution Termination Date occurs, an annual amount equal to \$550,000 that is payable from a combination of Remainder Taxes and Net Available Increment as set forth in this Financing Plan. The City will use the Stage 2 Contribution, in its discretion, either (i) to pay lease payments related to the Certificates of Participation, or (ii) with respect to any portion of the Stage 2 Contribution funded from Net Available Increment, to pay debt service on IFD Debt or (iii) with respect to any portion of the Stage 2 Contribution funded from Remainder Special Taxes, to pay debt service on CFD Bonds.

**“Stage 2 Contribution Termination Date”** means the earlier of (i) the final maturity date of the Certificates of Participation and (ii) the date on which the aggregate Stage 2 Contributions are equal to the Maximum Annual Stage 2 Lease Payment.

**“State”** is defined in the DDA.

**“Statement of Indebtedness”** means the report an IFD may file for each Fiscal Year to properly evidence the indebtedness of such IFD, whether or not required by the IFD Act.

**“Stormwater Management Controls”** is defined in the DDA, but is applicable in this Financing Plan only to the extent such facilities will be dedicated to the City.

**“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 Developer for a portion of the Project Site.

“**Termination Proceeds**” is defined in Section 3.8(c)(ii).

“**Total Installment Payments**” means 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.

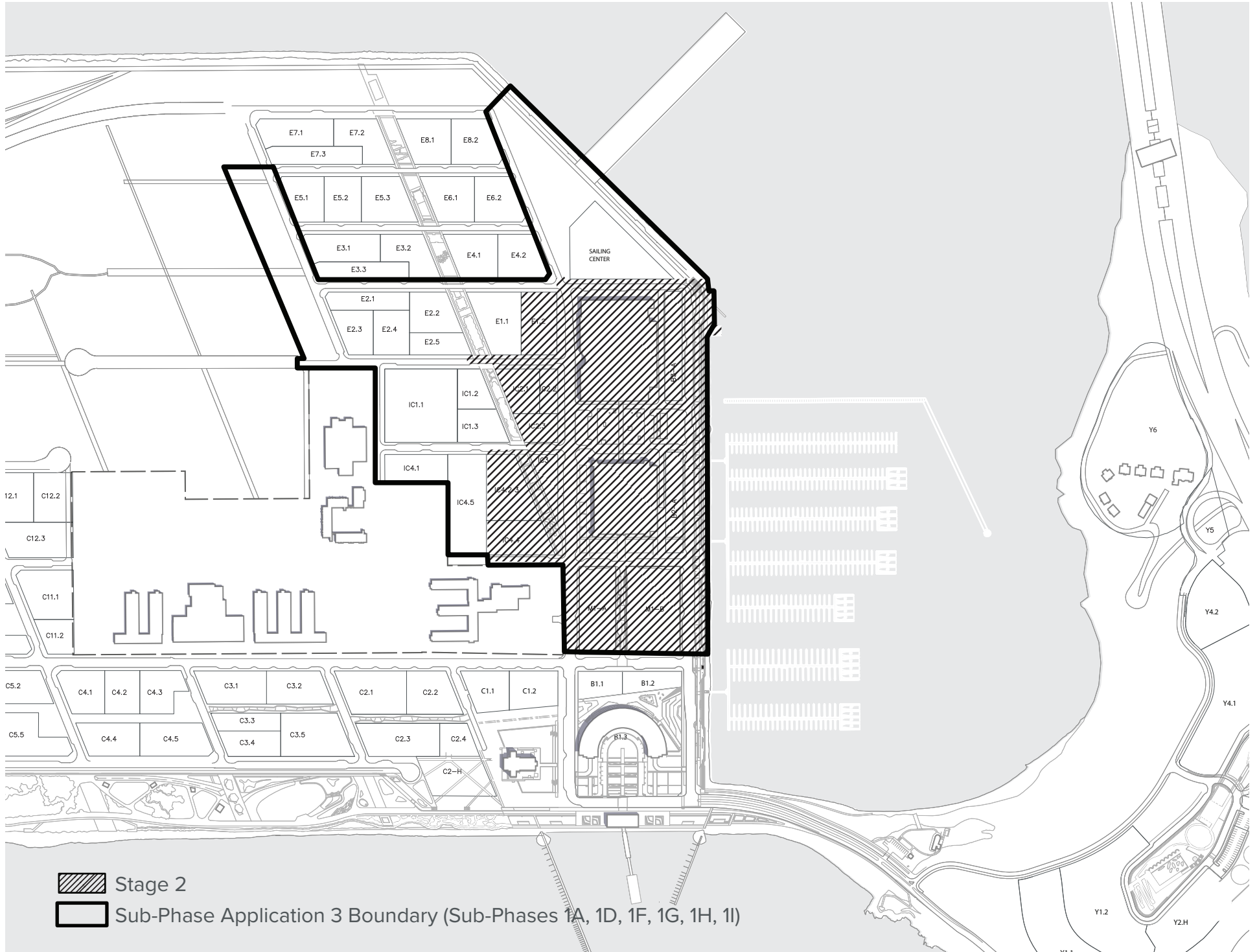
**“Vertical Developer”** is defined in the DDA.

**“Work Program”** a work program for a Redesign Plan submitted by Authority to the Navy.

**Schedule 4.1(d)**

**Map of Stage 2**

[ ATTACHED ]



SCHEDULE 4.1(d) to Exhibit D

**Attachment A**

**Form of Acquisition and Reimbursement Agreement**

[Attached.]

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**AMENDED AND RESTATED  
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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- 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 [Stage 2] Payment Request – Acquisition Facilities and Components
- Exhibit C-1 Acquisition Facilities and Components to Which [Stage 2] Payment Request Applies
- Exhibit C-2 Calculation of Actual Cost
- Exhibit D Form of Payment Request – Authorized Payments

**AMENDED AND RESTATED  
ACQUISITION AND REIMBURSEMENT AGREEMENT  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

This AMENDED AND RESTATED ACQUISITION AND REIMBURSEMENT AGREEMENT (including any Supplement, this “**Agreement**”), dated for reference purposes only as of August 1, 2024, 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 Article 9 have the meanings 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, Stormwater Management Controls, 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; (3) pay Developer for Authorized Payments from available Funding Sources; and (4) establish specific procedures for funding the Stage 2 Alternative Financing.

**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) upon full execution and delivery, will be effective as of March 8, 2016; 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 Exhibit A and 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 Exhibit B and 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; (d) update the preliminary Developer Allocation for the Acquisition Facilities; and (e) 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 Exhibit B and any 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. Subject to subsection (b) below, the Reviewing Party will have thirty (30) calendar 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) calendar days to review any resubmitted proposed Supplement. The term "**Supplement Review Period**" as used in this Agreement will mean the applicable period specified above in this Section 1.4(a). If the Reviewing Party fails to notify Developer in writing 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; (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; or (D) all or any portion of the specified Components are not eligible to be financed as components under the Governing Acts.

(c) Exhibit B and any Supplement thereto shall indicate preliminarily how Developer intends to allocate the following costs to be paid or incurred by Developer (as applicable) (the "**Developer Allocation**"):

(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.

(d) In reviewing the preliminary Developer Allocation set forth on Exhibit B or any Supplement, the Developer Allocation will be presumed to be reasonable and will be accepted for all purposes of this Agreement unless the Director of Public Works notifies

Developer of the City’s good-faith objection. If the Director of Public Works has timely objected to the Developer Allocation, then the Director of Public Works 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**”).

(e) The Developer Allocation set forth on Exhibit B or any Supplement is preliminary and subject to verification and change to reflect new information. Actual Costs and Developer Allocations will be set forth on Exhibit C, and a further Supplement to Exhibit B will be prepared to conform to such Actual Costs, if necessary.

(f) 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 or any other sources that are mutually agreed to by the City and Developer (including, but not limited to, lease revenue bonds described in Section 5.1 of the Financing Plan). Unless otherwise agreed to in writing by the parties, in no circumstances shall the City’s General Fund, credit, taxing power (other than to the limited extent described in this Agreement) or revenues other than the Funding Sources be pledged or be available 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, nor shall the City have any 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 satisfaction of all escrow requirements and release from the escrow fund; and (ii) in the amounts specified in the applicable Indenture. The City agrees to take all reasonable actions necessary to cause the satisfaction of all the conditions to the release of funds from an escrow fund.

(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. Other than as contemplated by the Funding Sources or as otherwise agreed to in writing by the parties, in no circumstances shall the City’s credit, taxing power (other than to the limited extent described in this Agreement) or General Fund or any revenues other than the Funding Sources be pledged to or be available to pay all or any part of the Actual Cost of an Acquisition Facility, Components or all or any part of any Authorized Payment.

#### 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 from and after the CFD Conversion Date for such CFD, 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.

(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 the City's investment policy and 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 and is not intended as a public works contract. 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. The City and Developer further acknowledge and agree that any public works contracting requirements of the City and the Authority are not applicable to the construction and acquisition of the Acquisition Facilities or any Component. Nothing in this Section 2.3(a) shall limit or alter the requirements of the DDA or the City DA, including without limitation, the payment of prevailing wages as set forth in those agreements.

(b) Developer agrees to award all contracts and execute all contract change orders 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.

(c) 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 and found by the Director of Public Works to be Ready for Payment. For purposes of clarification, for a Component that is dependent on the completion of other Components to actually be operational, the term "ready for intended use" means only that the Component has been constructed in accordance with the applicable Plans and is capable of being operational when the other Components are completed.

(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) Business Days following receipt of Developer's written request to inspect Acquisition Facilities or Components that Developer believes in good faith are Ready for Payment (the "**Inspection Request**"). 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) calendar days. Within five (5) Business Days following the completion of the inspection, the Director of Public Works shall notify Developer of the results of the inspection by providing a Completion Confirmation 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 available 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 (either originally or 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 (either originally or 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 Completion Confirmation; and

(ii) Proof of Payment evidencing that the Actual Costs were previously incurred and, if applicable, paid, for the Acquisition Facility or Component.

(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 or contract change orders 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 Completion Confirmation 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;

(iv) as-built drawings and an executed assignment of the Plans, to the extent reasonably obtainable;

(v) assignment of any and all rights of Developer to reimbursement from Third Parties with respect to the Actual Costs that are the subject of the Payment Request;

(vi) an executed bill of sale for any utility substructures (e.g. vaults, conduits, etc.) that are the subject of the Payment Request, if applicable; and

(vii) 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 Acquisition Facility, under which each such Person unconditionally or conditionally waives all lien and stop notice rights with respect to the pending payment.

(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, demonstrating that such Actual Costs are consistent with the Developer Allocation set forth on Exhibit B, or, to the extent such Developer Allocation has changed, providing the basis for such change.

#### 4.2 Processing Payment Requests for Acquisition Facilities and Components.

(a) Within ten (10) calendar 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-calendar 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) calendar 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) calendar 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) Business Days after (i) Approving a Payment Request or after the Deemed Approval of a Payment Request, and (ii) receipt of the Completion Confirmation, the Director of Public Works will forward the counter-signed Approved Payment Request to the City Finance Deputy. 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 Finance Deputy, with a copy to the Director of Public Works.

(b) Intentionally Omitted.

(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 1.4(d), then the City may withhold payment only of the amount of the Developer Allocation that is the subject of the City's objection, and all undisputed portions of the Developer Allocation shall be paid to the Developer. When the City and Developer agree on the Agreed-Upon Allocation, any portion of the Developer Allocation that was withheld but that the City and Developer have agreed is part of the Agreed-Upon Allocation 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 Director of Public Works 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) Subject to Section 4.4(e) (or, for Stage 2 Alternative Financing, Section 4.4(f)), 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) Subject to Section 4.4(e) (or, for Stage 2 Alternative Financing, Section 4.4(f)), 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) For Payment Requests other than Stage 2 Payment Requests, Section 4.4(f) will not apply. 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.

(f) For Stage 2 Payment Requests, Section 4.4(e) will not apply. Instead, the City shall pay the entirety of each Stage 2 Payment Request for an Acquisition Facility

constituting a Stage 2 Qualified Project Cost without retention or hold back of any kind until ninety percent (90%) of the Actual Cost of the Acquisition Facility constituting a Stage 2 Qualified Project Cost is paid. Once 90% of the Actual Cost of an Acquisition Facility constituting a Stage 2 Qualified Project Cost is paid, the final Stage 2 Payment Request for an Acquisition Facility shall be submitted by the Developer making up the remaining ten percent (10%) of the Actual Cost of such Acquisition Facility constituting a Stage 2 Qualified Project Cost. The final Stage 2 Payment Request for an Acquisition Facility shall be paid on the earlier of (i) satisfaction of the conditions for final payment set forth in Section 4.4(b) and (c) are met with respect to such Acquisition Facility constituting a Stage 2 Qualified Project Cost, or (ii) a time that is otherwise agreed to by the Developer and the Director of Public Works.

4.5 Stage 2 Alternative Financing: Expedited Review of Payment Requests and Processing. In light of the mutual objectives of the Parties to accelerate the delivery of the Infrastructure, Stormwater Management Controls, and other Improvements contemplated by the Street Improvement Permit for Stage 2, and the provision of Alternative Financing therefor, all as described in Section 4.1(d) of the Financing Plan, the Parties mutually agree that changes to the process of reviewing and approving payments under this Section 4.5 and in the next Section 4.6 (and as contemplated by Section 6.4 of this Agreement) shall be modified for the Stage 2 Alternative Financing and the provisions of this Section 4.5 shall apply only to the funding of the Stage 2 Qualified Project Costs.

(a) To initiate the process for payment of the Actual Cost of the Stage 2 Qualified Project Costs, Developer must deliver to the Director of Public Works (with a copy to the Authority and the City Finance Deputy) a “**Stage 2 Payment Request**” in the form of Exhibit C (for Stage 2) that contains all relevant information, including the identity of the Stage 2 Alternate Financing as the Funding Source to pay for such Stage 2 Qualified Project Costs, together with all required attachments and exhibits, all in an organized manner. Required attachments include a certificate by the engineer or architect of record certifying a quantity-based inspection (the “**Stage 2 Inspection Certificate**”). For the avoidance of doubt, certification by the architect or engineer of a pay application on AIA form G702 or equivalent shall constitute an acceptable Stage 2 Inspection Certificate. Proof of payment of the Stage 2 Qualified Project Costs (the “**Stage 2 Payment Receipt**”) shall not be required to be provided with the Stage 2 Payment Request, but shall be provided prior to the actual payment of the Stage 2 Payment Request. Section 4.1(a) shall not apply to a Stage 2 Payment Request, but each of Section 4.1(b), Section 4.1(c), and Section 4.1(d) shall apply to a Stage 2 Payment Request.

(b) Within ten (10) calendar days after receipt of any Stage 2 Payment Request, the Director of Public Works will review the Stage 2 Payment Request to: (i) determine that it is complete; or (ii) determine that the Stage 2 Payment Request is incomplete and provide Developer with a complete list of additional information and/or documentation reasonably necessary for the Stage 2 Payment Request to be complete for the Director of Public Works to review. At the Developer’s election, any incomplete items can be either (i) addressed and resubmitted as part of the same Stage 2 Payment Request, in which case the timeframes for review of a resubmittal stated in this paragraph shall apply, or (ii) deferred to a subsequent Stage 2 Payment Request, in which case the balance of the current Stage 2 Payment Request will be considered 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. Provided the Director of Public Works receives the applicable resubmitted Stage 2 Payment Request prior to the Resubmittal Deadline, a new ten (10) calendar day period shall begin.

(c) Within fifteen (15) calendar days after the date a Stage 2 Payment Request is determined to be complete under Section 4.5(b), the Director of Public Works will review the Stage 2 Payment Request to confirm that all conditions in Article 3 and Section 4.5(a) have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the Stage 2 Payment Request is Approved (which will be confirmed by counter-signing the Stage 2 Payment Request); or (ii) the Stage 2 Payment Request is disapproved in whole or in part, specifying in the notice the portion of the Stage 2 Payment Request that is disapproved and the reason(s) for disapproval. If the Stage 2 Payment Request is disapproved in part, the Director of Public Works will forward the Stage 2 Payment Request to the City for partial payment under Section 4.6, together with a copy of the Director's notice of partial disapproval to Developer. Developer may resubmit any Stage 2 Payment Request disapproved in whole or in part with additional supporting documentation as part of a subsequent Stage 2 Payment Request, and subject to the Resubmittal Deadline in Section 4.5(d), 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 ten (10) calendar days.

(d) The Parties acknowledge the Developer intends to submit Stage 2 Payment Requests on a monthly basis. City is not obligated to process more than one Stage 2 Payment Request per month. Any Stage 2 Payment Request initially submitted after the 10th calendar day of each month (or any Stage 2 Payment Request resubmitted after the 25<sup>th</sup> calendar day of each month (the "**Resubmittal Deadline**")) will not be reviewed for the current month's Stage 2 Reimbursement Payment cycle, but will be carried over to the next calendar month's Stage 2 Reimbursement Payment cycle. Developer may submit no more than one Stage 2 Reimbursement Request within any month.

(e) The process for review of the Stage 2 Payment Requests is subject to Article 6.

4.6 Payment of Stage 2 Payment Requests. This Section 4.6 applies only to the payment of Stage 2 Payments Requests.

(a) Within five (5) calendar days after (i) Approving a Stage 2 Payment Request and (ii) proffer or receipt of the applicable Stage 2 Payment Receipt, the Director of Public Works will forward the counter-signed Approved Stage 2 Payment Request to the City Finance Deputy and the Authority's Finance Manager. If the Director of Public Works has not forwarded a counter-signed Approved Stage 2 Payment Request within that period, Developer will have the right to deliver the unsigned Stage 2 Payment Request, together with proof of its delivery to the Director of Public Works, directly to the City Finance Deputy and the Authority's Finance Manager, with a copy to the Director of Public Works.

(b) Intentionally Omitted.

(c) The City must pay the Actual Costs (or such lesser amount required by Section 4.4(a)) to the extent of the available proceeds of the Stage 2 Alternative Financing within five (5) Business Days after the City's receipt of (i) a counter-signed Approved Stage 2 Payment Request (or an unsigned Stage 2 Payment Request and proof of delivery), (ii) required City signatures, and (iii) bond counsel approval. If the City objected to the Developer Allocation under Section 1.4(d), 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 five (5) Business Days thereafter. At the written request of Developer, the City will make payments under any Approved Stage 2 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 apply to the relative timing of construction, inspection, and acceptance of Acquisition Facilities and Components in Stage 2 and the payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Acquisition Facilities and Components in Stage 2.

## 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 Authority Director 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) calendar 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) calendar 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) Business 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) Business 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. Unless a different priority is requested in writing by the Developer, the Vested Payment Request will be paid from such Identified Funding Sources to the payee of such Vested Payment Request in the chronological order in which the Completion Confirmation is received and then by the number of the Payment Request (so that a Payment Request with a Completion Confirmation of an earlier date will be paid first before a Payment Request with a Completion Confirmation of a later date or no Completion Confirmation at all, and if the Completion Confirmations are of the same date, then the Payment Request of a lower number shall 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, or unless a different priority is requested in writing by the Developer, 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 Authority Director or the Director of Public Works, as applicable, 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: \_\_\_\_\_." Delivery of a Supplement or Payment Request to the Authority Director or the Director of Public Works, as applicable, 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 Authority agree that any additional information request by the Authority Director 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 Authority Director 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 Authority Director, 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.

6.6 Developer Maintenance Payments.

(a) Notwithstanding any provision in this Agreement to the contrary, if Developer is required to make a Developer Maintenance Payment under section 2.7(c)(ii) of the Financing Plan but fails to do so as and when required (as defined in the Financing Plan, a "**Maintenance Default**"), then the City may pay to the Authority from moneys in the Remainder Taxes Project Account the amount due and owing by Developer for the Maintenance Default, including interest and other charges that may be due under the DDA as a result of the Maintenance Default (the "Maintenance Default Payment"). If the amount paid by the City to the Authority from the Remainder Taxes Project Account is less than the Maintenance Default Payment amount, then the provisions of the following paragraph (b) shall apply.

(b) If the amount paid to the Authority under the preceding clause (a) is less than the Maintenance Default Payment amount, then any Payment Request submitted by Developer that has not already been paid shall be modified to provide that the Payment Request will be payable from any Funding Sources to two parties: (1) to the Authority, in the amount of the remaining unpaid Maintenance Default Payment, and (2) to Developer, the remaining amount due to Developer under the Payment Request after deducting the remaining unpaid Maintenance Default Payment paid to the Authority. If the Payment Request is less than the remaining unpaid Maintenance Default Payment amount, then there will be no payment to Developer and the delinquent payment amount shall be carried forward to future Payment Requests until the Authority is paid the full Maintenance Default Payment amount. Following such payment in full to the Authority, the remaining balance of the Payment Requests shall be payable to Developer in accordance with this Agreement. For purposes of clarification, any amounts payable to the Authority under this Section 6.6(b) are payments made by the Developer to the Authority from the Funding Sources that Developer has received for the Actual Costs of an Acquisition Facility or Component or the payment of Authorized Payments.

(c) If and to the extent the Authority is not paid the full amount of the Maintenance Default Payment as set forth above through the implementation of Section 6.6(a) or (b) within thirty (30) days following demand, then the City may levy Project Special Taxes on all Undeveloped Property in one or more CFDs in an aggregate amount equal to the remaining unpaid Maintenance Default Payment amount, provided that the total Project Special Taxes levied on such Undeveloped Property may not exceed any maximum specified in the RMA. Developer, the Authority and the City understand and agree that the provisions of this Section 6.6(c) shall operate as security for the payment of the Developer Maintenance Payments in satisfaction of section 2.7(g) of the Financing Plan.

(d) Nothing in this Section shall constitute a waiver or release of Authority rights and remedies under the DDA for a default by Developer.

## **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, the laws of the State of California and its charter, is in compliance with the Constitution, the laws of the State of California and its charter, 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 Authority 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. Unless otherwise agreed to in writing by the parties, in no circumstances shall the City's credit, taxing power (other than to the limited extent described in this Agreement) or General Fund or any revenues other than the Funding Sources be pledged to or be available to pay all or any part of the Actual Cost of an Acquisition Facility, Components or all or any part of any Authorized Payment. 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. Notwithstanding the foregoing, Developer and any Transferee shall have the right, at any time and from time to time during the term of this Agreement, to collaterally assign and grant a security interest (a "**Security Instrument**") in any and all of Developer's or a Transferee's right, title and interest in this Agreement as security for one or more loans related to the Project Site made to Developer or a Transferee (the party extending such credit and holding such security interest, a "**Lienholder**"), and any such Lienholder shall have the right to succeed to the relative interests of Developer under this Agreement to the extent secured by the applicable Security Instrument concurrently with a Mortgagee Acquisition by the Lienholder under the DDA. A Lienholder may transfer all or any part of an interest in any Security Instrument without the consent of or notice to the Authority or the City; provided, however, that the Authority and the City's obligation to any successor Lienholder is limited to the applicable Lienholder's rights under the DDA and this Agreement.

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 in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

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.

8.11 Numbers.

(a) Generally. For purposes of calculating a number under this Agreement, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

(b) Number of Days. References in this Agreement to days shall be to calendar days, unless otherwise specified; provided, that if the last day of any period to give notice, reply to a notice, meet a deadline or to undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

8.12 No Impairment of Lien. No default or breach by Developer or a Transferee under this Agreement shall invalidate or defeat the security interest of any Lienholder in this Agreement. Neither a breach of any obligation Developer or a Transferee owes to Lienholder that is secured by a Security Instrument or the exercise of remedies by a Lienholder against Developer or a Transferee pursuant to the Security Instrument or law shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's or a Transferee's rights or obligations or constitute, by itself, a default or breach under this Agreement.

## 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, Stormwater Management Controls, and other Improvements that the Developer is required to construct under the DDA and the City DA 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 1.4(d).

“**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 Director of the Office of Public Finance 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 variants **“Completed”** or **“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, including the progress payments made for Stage 2 Acquisition Facilities pursuant to Section 4.5.

**“Completion Confirmation”** means, as the context requires, a Determination of Completion or a Notice of Component Completion issued by the Director of Public Works under Section 3.1(c) with respect to an Acquisition Facility or Component, respectively.

“**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; provided, however, in no event will any Stage 2 Payment Request be treated as Approved 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 1.4(c).

“**Developer Maintenance Payment**” is defined in the Financing Plan.

“**Development Requirements**” is defined in the DDA.

“**Determination of Completion**” means a written notice from the Director of Public Works that an Acquisition Facility has been Approved as inspected. The form of the written notice shall be the form customarily provided by the Director of Public Works to evidence the completion and Approval of the inspection of a facility.

“**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.

“**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**” means the Infrastructure and Revitalization Financing District Act (Government Code Section 53669 et seq.), as amended from time to time.

“**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.

“**Lienholder**” is defined in Section 8.4.

“**Maintenance Default**” is defined in the Financing Plan.

“**Maintenance Default Payment**” is defined in Section 6.6(a).

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

“**Net Available Increment**” is defined in the Financing Plan.

“**Notice of Component Completion**” means a written notice of the Director of Public Works that a Component has been Approved as inspected. The form of the written notice shall be the form customarily provided by the Director of Public Works to evidence the completion and Approval of the inspection of a facility with appropriate changes to reflect that the Director of Public Works is not accepting dedication or transfer of title to an Acquisition Facility of which the Component is a part.

“**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.

“**Ready for Payment**” means that the Acquisition Facility or Component is ready for its intended use and is completed in substantial conformity with the DDA, Plans and Specifications and Applicable City Regulations and procedures, irrespective of the functionality of the larger system of which it is a part.

“**Remainder Taxes**” is defined in the Financing Plan.

“**Remainder Taxes Project Account**” is defined in the Financing Plan.

“**Resubmittal Deadline**” is defined in Section 4.5.

“**Reviewing Party**” is defined in Section 1.4.

“**Security Instrument**” is defined in Section 8.4.

“**Soft Costs**” is defined in the Financing Plan.

“**Stage 2**” is defined in the Financing Plan.

“**Stage 2 Alternative Financing**” is defined in the Financing Plan.

“**Stage 2 Inspection Certificate**” is defined in Section 4.5(a).

“**Stage 2 Payment Receipt**” is defined in Section 4.5(a).

“**Stage 2 Payment Request**” is defined in Section 4.5(a).

“**Stage 2 Qualified Project Costs**” is defined in the Financing Plan.

“**Stormwater Management Controls**” is defined in the DDA.

“**Street Improvement Permit**” means a permit issued by the City’s Department of Public Works for construction of improvements in or adjacent to an existing or future public right-of-way.

“**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 date first written above.

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

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

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

Approved as to form:

DAVID CHIU,  
City Attorney

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

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

Deputy City Attorney

**AUTHORITY:**

Authorized by City Resolution No. 241-11 adopted June 7, 2011 and City Resolution No. 196-24 adopted April 23, 2024

TREASURE ISLAND DEVELOPMENT AUTHORITY,  
a California non-profit public benefit corporation

Approved as to Form:

DAVID CHIU,  
City Attorney

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

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

Deputy City Attorney

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

Name: Robert Beck

Title: Treasure Island Director

[Signatures continue on following page.]



**DEVELOPER:**

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

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

Name: Sandy Goldberg

Its: Vice President

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

Name: Christopher Meany

Its: Vice President

[Signatures continue on following page.]

**ACKNOWLEDGED AND AGREED:**

TREASURE ISLAND SERIES 1, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Sandy Goldberg  
Its: Vice President

By: \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

TREASURE ISLAND SERIES 2, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Sandy Goldberg  
Its: Vice President

By: \_\_\_\_\_  
Name: Christopher Meany  
Its: Vice President

[End of signatures.]

## EXHIBIT A

### **Description of Acquisition Facilities and Authorized Payments to be Financed for the Project**

#### A. Acquisition Facilities

1. Acquisition - includes acquisition of land for public improvements.
2. Abatement - includes abatement of hazardous materials and disposal of waste.
3. Demolition - removal of below-grade, at-grade, and above-grade facilities, and recycling or disposal of waste.
4. Supplemental Fire Water Supply System - including, but not limited to, main pipe, laterals, valves, fire hydrants, cathodic protection, manifolds, air-gap back flow preventer, wharf fire hydrants, portable water pumper, and tie-ins for onsite water supply network that is unique to San Francisco intended for fire suppression.
5. Low Pressure Water - including, but not limited to, main pipe, pressure reducing stations, laterals, water meters, water meter boxes, back flow preventers, gate valves, air valves, blowoffs, fire hydrants, cathodic protection, and tie-ins for onsite and offsite low pressure water supply network intended for domestic use.
6. Water Tank Facilities – including, but not limited to, storage tanks, pumps, and other facilities associated with water storage.
7. Recycled Water - including, but not limited to, main pipe, laterals, water meters, water meter boxes, back flow preventers, gate valves, air valves, blowoffs, cathodic protection, and tie-ins for recycled water supply network intended to provide treated wastewater for use in irrigation of parks and landscaping as well as graywater uses within buildings.
8. Storm Drainage System – including, but not limited to, main pipe, laterals, manholes, catch basins, air vents, stormwater treatment facilities, connections to existing systems, headwalls, outfalls, and lift stations for a network intended to convey onsite and offsite separated storm water.
9. Separated Sanitary Sewer – including, but not limited to, main pipe, laterals, manholes, traps, air vents, connections to existing systems, force main pipe and associated valves and cleanouts, and pump and lift stations for a network intended to convey separated sanitary sewage.
10. Joint Trench – including, but not limited to, the electrical substation, installation of primary and secondary conduits, overhead poles, pull boxes, vaults, subsurface enclosures, and anodes, for dry utilities including but not limited to electrical and information systems.

11. Earthwork – including, but not limited to, importation of clean fill materials, clearing and grubbing, slope stabilization, ground improvement, installation of geogrid, surcharging, wick drains, excavation, rock fragmentation, placement of fill, compaction, grading, erosion control, and post-construction stabilization such as hydroseeding.
12. Retaining Walls – including, but not limited to, excavation, foundations, construction of retaining walls, subdrainage, and backfilling.
13. Highway Ramps, Roadways, Pathways, Curb, and Gutter – including, but not limited to, road subgrade preparation, aggregate base, concrete roadway base, asphalt wearing surface, concrete curb, concrete gutter, medians, colored asphalt and concrete, speed tables, class 1 and 2 bike facilities (e.g., cycle tracks), sawcutting, grinding, conform paving, resurfacing, for onsite and offsite roadways.
14. Traffic – including, but not limited to, transit stops, transit facilities, transit buses and ferries, bridge structures, permanent pavement marking and striping, traffic control signage, traffic light signals, pedestrian traffic lighting, and contributions for offsite traffic improvements.
15. Streetscape – including, but not limited to, subgrade preparation, aggregate base, sidewalks, pavers, ADA curb ramps with detectable tiles, streetlights, light pole foundations, landscaping, irrigation, street furniture, waste receptacles, newspaper stands, and public art.
16. Shoreline Improvements – including, but not limited to, demolition, excavation, installation of revetment, structural improvements of shoreline and revetment, and structural repair for replacement or retrofit of shoreline structures.
17. Parks – including, but not limited to, ground improvement, subgrade preparation, landscaping and trees, aggregate base, sidewalks, pavers, decomposed granite, lighting, irrigation, furniture, decks, fountains, and restrooms.
18. Ferry Terminal – including, but not limited to, foundations, ferry shelter building, signs, electronic toll collection system, breakwaters, pier, gangway, float, restroom, bike storage
19. Hazardous Soil Removal – removal and disposal of contaminated soil.
20. Community Facilities – including, but not limited to, costs of police station, fire station, community center spaces for uses including reading room/library, senior/adult services, teen/youth center, outdoor performance and gathering spaces, community gardens, public school, childcare centers, public recreational facilities including ballfields, playing fields and sports centers, and publicly-owned parking garages.

21. Any other amounts specifically identified in the DDA as a Project Costs.
22. Hard Costs, Soft Costs and Pre-Development Costs, as defined in the Conveyance Agreement, associated with the design, procurement, development and construction of all Facilities listed herein.

B. Authorized Payments

23. Subsidies – including, but not limited to, subsidies provided to the City and other entities related to open space maintenance, transportation and transit operations, affordable housing design and construction, design and construction of ramps and access roads.

**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 [Stage 2] Payment Request – Acquisition Facilities and Components**

[STAGE 2] 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 Amended and Restated 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 \_\_\_\_\_) (herein, the “**Acquisition and Reimbursement Agreement**”), all as more fully described in Exhibit C-1. In connection with this [Stage 2] 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 [Stage 2] Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth in this [Stage 2] Payment Request.
2. The Acquisition Facilities or Components for which payment is requested were constructed in accordance with the DDA and City DA, and an [Inspection Request/Stage 2 Inspection Certificate] is pending for the Director of Public Works’ review. Payment shall not be made until such time that the [Inspection Request/Stage 2 Inspection Certificate] has been approved as indicated in a notice from the Director of Public Works [or is deemed approved].
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][as indicated in the Proof of Payment to be provided prior to payment of this Payment Request]. 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 DDA, the City DA, and 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 [Stage 2] 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>Improvement Area No. 1 Bonds</b>
	<b>Remainder Taxes for Improvement Area No. 1</b>
	<b>Improvement Area No. 2 Bonds</b>
	<b>Remainder Taxes for Improvement Area No. 2</b>
	<b>IFD Debt for IFD No. 1</b>
	<b>Net Available Increment in IFD No. 1</b>
	<b>Stage 2 Alternative Financing</b>
	<b>Other Source (specify):</b>
<b>Total Actual Cost</b>	

Note: the table above may be expanded as needed to reflect additional improvement areas or additional Funding Sources.

9. Payments under this [Stage 2] 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 this [Stage 2] Payment Request: \_\_\_\_\_

\_\_\_\_\_



I hereby declare that the above representations and warranties and all information provided in this [Stage 2] 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)/4.5(b)] of the Acquisition and Reimbursement Agreement,**

**if you fail to notify Developer that**

**this [Payment Request/Stage 2 Payment Request] is Approved or disapproved**

**within [thirty (30)/fifteen (15)] calendar days after your receipt of this [Payment Request/Stage 2 Payment Request],**

**it will be Deemed Approved.**

**[Stage 2] Payment Request Approved on \_\_\_\_\_.**

**By: \_\_\_\_\_  
Director of Public Works**

**EXHIBIT C-1**

**Acquisition Facilities and Components to Which [Stage 2] Payment Request Applies**

[STAGE 2] 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 [Stage 2] 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**

[STAGE 2] 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. [For Payment Requests other than Stage 2 Payment Requests] Retention (see Section 4.4(e) of the Acquisition and Reimbursement Agreement, if applicable): (\$ \_\_\_\_\_)
  
  - 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 [Stage 2] Payment Requests for which release of retention is requested.



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) calendar 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**

[ ATTACHED ]

106473065.26

## **Financing Plan Attachment B Expected Categories of Island-Wide Costs**

### **Land Preparation**

- Environmental Remediation Work cost cap insurance
- Island Perimeter Flood Protection Improvements

### **Infrastructure**

- Island Causeway (connecting YBI to TI)<sup>1</sup>
- Viaduct Upgrade and Ramps Cost Contribution<sup>2</sup>
- Offsite Utilities and Trunk Lines
- Water Storage Tanks
- On site Renewable Energy Generation
- Firefighting Water Supply System
- Central Utilities Plants
- Interim Construction and Utilities that have island-wide benefits

### **Public Parks and Open Space; Landscaping**

- YBI HMP
- YBI Hilltop Park
- YBI Beach Park
- Northern Wilds
- Ballfields
- Pier 1
- Ferry Plaza Park
- Cultural Park / Chapel
- Urban Farm

### **Community Facilities<sup>2</sup>**

- School
- Police & Fire
- Day Care
- Other community facilities

### **Transportation and Transit Systems<sup>2</sup>**

- Ferry Terminal Construction
- Ferry Quay Construction
- Ferry Boats Purchase
- AC Transit Bus Purchase
- Muni Bus Subsidy
- Public On-Island Shuttle Purchase

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<sup>1</sup> Island Causeway costs are island-wide due to its value to all phases of TI

<sup>2</sup> Costs are island-wide, but may be ineligible for reimbursement from IFD Debt if Developer pays these costs through subsidy contributions rather than direct construction cost payment



Bike Lending Library  
Congestion Pricing Equipment  
Permanent Surface Parking Lots  
Public Parking Meters  
Public Parking Garages

**Public Historic Building Rehab Costs**

Building 2 (to the extent used as grocery store or other island-wide benefit)  
Other historic structures (if structure used for public community-wide benefit)

**Land Payments**

**Planning and Entitlement Costs<sup>3</sup>**

**Design and Engineering Costs<sup>3</sup>**

**Fees / Bonds / Permits<sup>3</sup>**

**Construction Management Costs<sup>3</sup>**

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<sup>3</sup> Share of costs considered island-wide will be pro-rated by calculating share of qualified island-wide costs to total qualified project costs (understanding that some island-wide costs may not also be qualified costs) and multiplying that ratio by the total costs incurred in any category marked for proration in this manner.