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

**by and among**

**CITY AND COUNTY OF SAN FRANCISCO,  
a public body, corporate and politic, of the State of California,**

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

**and**

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

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## **LIST OF EXHIBITS**

- Exhibit A Description of Acquisition Facilities and Authorized Payments to Be Financed for the Project
- Exhibit B Description of Acquisition Facilities and Components with Cost Estimates, and Authorized Payments and Components
- Exhibit C Form of Payment Request – Acquisition Facilities and Components
- Exhibit C-1 Acquisition Facilities and Components to Which Payment Request Applies
- Exhibit C-2 Calculation of Actual Cost
- Exhibit D Form of Payment Request – Authorized Payments

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

This ACQUISITION AND REIMBURSEMENT AGREEMENT (including any Supplement, this “**Agreement**”), dated for reference purposes only as of March 8, 2016, 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; and (3) pay Developer for Authorized Payments from available Funding Sources.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, City, and Authority hereby agree as follows:

**ARTICLE 1  
FUNDING**

1.1 Use of Funding Sources. This Agreement: (a) implements and is subject to all limitations of the DDA, the City DA, and the Financing Plan; (b) will become effective on the full execution and delivery of this Agreement (the “**Effective Date**”); and (c) describes the procedures by which, at Developer’s request, the City will use available Funding Sources to make payments to Developer for the Actual Costs (or such lesser amount required by Section 4.4(a)) of the Acquisition Facilities and Components and for Authorized Payments, each as contemplated in the Financing Plan. To the extent set forth in an Assignment and Assumption Agreement, Developer will mean a Transferee.

1.2 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; and (d) otherwise update or modify any other information in Exhibit B. The Parties agree that the City will not be obligated to pay Developer for the Actual Costs (or such lesser amount required by Section 4.4(a)) of an Acquisition Facility or a Component or for an Authorized Payment under this Agreement unless such Acquisition Facility or Component and its estimated Actual Cost or Authorized Payment is set forth on Exhibit B.

1.4 Review and Approval of Supplements. Under the Interagency Cooperation Agreement, the Department of Public Works will be the lead City agency to facilitate coordinated review of Project Applications and will assist the City as provided under this Agreement. Except as specifically provided otherwise in this Agreement or the Interagency Cooperation Agreement: (a) the Department of Public Works will be the lead City agency responsible for review of Developer's estimated Actual Costs and of any changes to its estimates of Actual Costs of Acquisition Facilities and Components contained in any Supplements submitted under this Agreement, and the Authority will be the lead agency responsible for review and approval of Supplements relating to Authorized Payments under this Agreement (as applicable, the "**Reviewing Party**"), subject to the following:

(a) Upon Developer's written request, the Reviewing Party will meet with representatives of Developer to establish acceptable contents of any Supplements to Exhibit A or Exhibit B. 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) 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, showing how Developer has allocated the following costs paid or incurred by Developer (as applicable):

(i) costs that apply to more than one Acquisition Facility or Component (e.g., Soft Costs), as allocated between the Acquisition Facilities or Components;

(ii) costs that apply to both Acquisition Facilities or Components and other improvements (e.g., grading), as allocated between the Acquisition Facilities or Components and the other improvements; and

(iii) amounts paid to the City and the Authority that apply to more than one Acquisition Facility or Component (e.g., inspection fees, Authority Costs, plan review fees, etc.), as allocated between the Acquisition Facilities or Components.

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

(a) Within ten (10) 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 Director of Public Finance. 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 Director of Public Finance, with a copy to the Director of Public Works.

(b) The Developer Allocations will be presumed to be reasonable and will be accepted for all purposes of this Agreement unless the Director of Public Works notifies Developer of the City's good-faith objection to the Developer Allocation shown in the Payment Request within five (5) Business Days after the Director of Public Works receives the unsigned Payment Request and proof of delivery from Developer. 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**”).

(c) The City must pay the Actual Costs (or such lesser amount required by Section 4.4(a)) to the extent of available Identified Funding Sources within fifteen (15) Business Days after the City’s receipt of a counter-signed Approved Payment Request (or an unsigned Payment Request and proof of delivery). If the City objected to the Developer Allocation under Section 4.3(b), then the City may withhold payment 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), 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), the City may withhold final payment for any Completed Acquisition Facility (if it has no Components) or the final Component of any Completed Acquisition Facility until: (i) the Completed Acquisition Facility has been finally inspected as provided in Section 3.1; (ii) the Acceptance Date for the Acquisition Facility has

occurred and the requirements of Section 4.1 have been satisfied to the extent applicable, or Developer has provided the Director of Public Works with evidence that the Governmental Entity has accepted dedication of and title to the Acquisition Facility; and (iii) general lien releases for the Acquisition Facility (conditioned solely upon payment from Funding Sources to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works.

(d) Nothing in this Agreement prohibits Developer from contesting in good faith the validity or amount of any mechanics' or materialman's lien or limits the remedies available to Developer with respect to such liens so long as any resulting delays do not subject the Acquisition Facilities or any Component to foreclosure, forfeiture, or sale. If Developer contests any such lien, Developer will only be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. In addition, the City agrees that Developer will have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify the City and the City for any losses sustained by the City or the City because of any liens that may exist at the time of acceptance of such an Acquisition Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

(e) The City will be entitled to withhold from the amounts payable under each Payment Request a portion for retention as authorized by City policies and procedures that constitute Applicable City Regulations, but in any case not to exceed ten percent (10%) of the amount of the Actual Cost of an Acquisition Facility or Component. The City will be obligated to release any retention it withholds in accordance with applicable City policies and procedures.

## **ARTICLE 5 PAYMENT REQUESTS FOR AUTHORIZED PAYMENTS**

5.1 Authorized Payments. In order to receive reimbursement of an Authorized Payment, Developer must deliver to the 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. 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, 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.

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. This Agreement shall become effective when the Parties have duly executed and delivered signature pages of this Agreement to each other. 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.

## **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 4.3(b).

**“Agreement”** is defined in the introductory paragraph.

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

**“Applicable City Regulations”** is defined in the DDA.

**“Approve”, “Approval” and “Approved”** are defined in the DDA.

**“Assignment and Assumption Agreement”** is defined in the DDA.



“**Authority**” means the Treasure Island Development Authority, a California non-profit public benefit corporation.

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

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

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

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

“**Authorized Payment Calculation**” is defined in Section 5.1.

“**Authorized Payments**” means: (a) the Qualified Project Costs shown in Exhibit A that are not for Acquisition Facilities or Components constructed by Developer; and (b) other amounts for which Developer is entitled to receive payment or reimbursement under the Financing Plan, such as Pre-Development Costs (not including any return on such Pre-Development Costs).

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

“**CFD**” is defined in the Financing Plan.

“**CFD Act**” is defined in the Financing Plan.

“**CFD Bonds**” is defined in the Financing Plan.

“**CFD Conversion Date**” is defined in the Financing Plan.

“**City**” means the City and County of San Francisco, a public body, corporate and politic, of the State of California.

“**City DA**” is defined in the Financing Plan.

“**City Finance Deputy**” means the 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 variant “**Completion**”) is defined in the DDA.

“**Component**” means a component or phase of an Acquisition Facility shown in Exhibit B, as amended from time to time by an Approved or Deemed Approved Supplement.

“**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.

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

“**Developer Allocation**” is defined in Section 4.1(d).

“**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.

“**Effective Date**” is defined in Section 1.1.

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

“**Funding Goals**” is defined in the Financing Plan.

“**Funding Sources**” is defined in the Financing Plan, and is subject to the limitations on the use of those funds set forth in the Financing Plan.

“**Governing Acts**” means, as applicable, the CFD Act, the IFD Act, or the laws governing the issuance of CFD Bonds, IFD Debt, or Alternative Financing.

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

“**Identified Funding Sources**” is defined in Section 4.1(a).

“**IFD**” is defined in the Financing Plan.

“**IFD Act**” 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.

**“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.

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

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

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

**“Sub-Phase”** is defined in the DDA.

**“Supplement”** means a written amendment to Exhibit A or Exhibit B.

**“Supplement Review Period”** is defined in Section 1.4(a).

**“Third Party”** means a Person that is not a Party.

**“Third Party Reimbursements”** means payments, if any, from Third Parties that are received by Developer as a reimbursement of Qualified Project Costs incurred with respect to the Acquisition Facilities, such as utility or other reimbursements.

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

**“Vested Payment Request”** is defined in Section 6.2.

[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]

IN WITNESS WHEREOF, the City, Authority, and Developer have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: Naomi M Kelly  
Name: Naomi M. Kelly  
Title: City Administrator

Approved as to form:

DENNIS J. HERRERA,  
City Attorney

By: [Signature]  
Name: Mark Blake  
Deputy City Attorney

**AUTHORITY:**

Authorized by City Resolution No. 241 adopted June 7, 2011

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

Approved as to Form:

DENNIS J. HERRERA  
City Attorney


By: [Signature]  
Deputy City Attorney Charles Sullivan

By: [Signature]  
Name: Robert Beck  
Title: Executive Director

**DEVELOPER:**

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

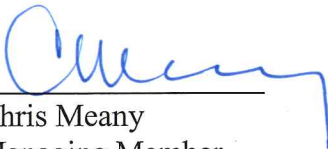
By: Treasure Island Holdings, LLC,  
a Delaware general partnership  
its co-Managing Member

By:   
Name: Kofi Bonner  
Its: Authorized Representative

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

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

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

By:   
Name: Chris Meany  
Title: Managing Member

**EXHIBIT C-2**

**Calculation of Actual Cost**

PAYMENT REQUEST NO. \_\_\_\_\_  
MADE ON BEHALF OF: \_\_\_\_\_

MAJOR PHASE: \_\_\_\_\_  
SUB-PHASE: \_\_\_\_\_

1. Description (by reference to Exhibit B to the Acquisition and Reimbursement Agreement) of the Acquisition Facility or Component \_\_\_\_\_
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost, including any Developer Allocation): \$ \_\_\_\_\_
3. Subtractions:
  - A. Holdback for lien releases (see Section 4.4(c) of the Acquisition and Reimbursement Agreement): (\$ \_\_\_\_\_)
  - B. Retention (see Section 4.4(e) of the Acquisition and Reimbursement Agreement): (\$ \_\_\_\_\_)
  - C. Third Party Reimbursements: (\$ \_\_\_\_\_)
4. Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3) \$ \_\_\_\_\_

**Attachments – Complete Acquisition Facilities Only:**

[ ] Copies of Payment Requests for which release of retention is requested.

**EXHIBIT C-1**

**Acquisition Facilities and Components to Which Payment Request Applies**

PAYMENT REQUEST NO. \_\_\_\_\_  
MADE ON BEHALF OF: \_\_\_\_\_

MAJOR PHASE: \_\_\_\_\_  
SUB-PHASE: \_\_\_\_\_

1. The Acquisition Facilities and Components for which payment is requested under this Payment Request are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Contract information for each contractor, subcontractor, materialman, and other contract for which payment is requested under this Payment Request is shown below.

Name	Amt. of Contract	Amt. Requested	Amt. Previously Pd.
Total			

**Attachments:**

- Approved Supplement(s) (*include proof of delivery if Deemed Approved*)
- Proof of Payment for each amount and included in the Actual Costs



**DEEMED APPROVAL NOTICE**

**Under Section 4.2(b) of the Acquisition and Reimbursement Agreement,**

**if you fail to notify Developer that**

**this Payment Request is Approved or disapproved**

**within thirty (30) calendar days after your receipt of this Payment Request,**

**it will be Deemed Approved.**

**Payment Request Approved on \_\_\_\_\_.**

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

**Director of Public Works**

I hereby declare that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge.

DEVELOPER:

[insert name of Developer]

By: \_\_\_\_\_  
Authorized Representative  
of Developer

Date: \_\_\_\_\_

**Attachments:**

- Notice of Approval following inspection by Director of Public Works
- Unconditional lien releases from the following: \_\_\_\_\_

\_\_\_\_\_

Conditional lien releases from the following: \_\_\_\_\_

- \_\_\_\_\_
- For Completed Acquisition Facility:** Copy of recorded conveyance of land
  - For Completed Acquisition Facility:** Copy of determination of completeness
  - For Completed Acquisition Facility:** Original assignment of warranties and guaranties
  - For Completed Acquisition Facility:** Original assignment of Plans
  - For Completed Acquisition Facility:** Original assignment of reimbursements from Third Parties payable with respect to the Acquisition Agreement
  - For Completed Acquisition Facility:** As-built drawings of the Acquisition Facility
  - Exhibit C-1
  - Exhibit C-2

assessments levied on the regular County tax rolls against property owned by Developer in the Project Site.

8. The Payment Request must be paid solely from the following sources of Funding Sources:

Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
	Improvement Area No. 1 Bonds
	Remainder Taxes for Improvement Area No. 1
	Improvement Area No. 2 Bonds
	Remainder Taxes for Improvement Area No. 2
	IFD Debt for IFD No. 1
	Net Available Increment in IFD No. 1
	Other Source (specify):
<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 Payment Request, when Approved or Deemed Approved, to be made as follows:

The amount of \$ \_\_\_\_\_ to the Project Account(s) held by Developer at the following financial institution(s) by wire, according to the following instructions:

\_\_\_\_\_

\_\_\_\_\_

The following amount(s) the following Third Party(ies) at the following address(es):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Other relevant information about Payment Request: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT C

### Form of Payment Request – Acquisition Facilities and Components

PAYMENT REQUEST NO. \_\_\_\_\_  
MADE ON BEHALF OF: \_\_\_\_\_ (“Developer”)  
MAJOR PHASE: \_\_\_\_\_ SUB-PHASE: \_\_\_\_\_

The undersigned hereby requests payment in the total amount of \$\_\_\_\_\_ for the Acquisition Facilities or Components (as described in Exhibit B to that certain Acquisition and Reimbursement Agreement among the City and County of San Francisco, Treasure Island Development Authority, and Treasure Island Community Development, LLC, dated for reference purposes only as of \_\_\_\_\_), all as more fully described in Exhibit C-1. In connection with this Payment Request, the undersigned hereby represents and warrants to the Director of Public Works and the City as follows:

1. He (she) is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth in this Payment Request.
2. The Acquisition Facilities or Components for which payment is requested were constructed in accordance with the DDA and City DA, and an Inspection Request is pending for the Director of Public Works’ review. Payment shall not be made until such time that the Inspection Request has been approved as indicated in a notice from the Director of Public Works.
3. All costs of the Acquisition Facilities or Components for which payment is requested hereby are Actual Costs, and have not been inflated in any respect, as indicated in the attached Proof of Payment. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.
4. The costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other Person who supplied goods or labor, as evidenced by the attached conditional or unconditional lien releases.
5. Developer is in compliance with the terms and provisions of the Acquisition and Reimbursement Agreement and no portion of the amount being requested to be paid was previously paid.
6. The Actual Cost of each Acquisition Facility or Component (a detailed calculation of which is shown in Exhibit C-2 for each such Acquisition Facility or Component), has been calculated in conformance with the terms of the Acquisition and Reimbursement Agreement.
7. To the knowledge of the undersigned, Developer is not delinquent in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special

**EXHIBIT B**

**Description of Acquisition Facilities and Components, with Cost Estimates, and Authorized  
Payments and Components**

[To be completed from time to time]

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.

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.

## **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.



**EXHIBIT D**

**Form of Payment Request – Authorized Payments**

PAYMENT REQUEST NO. \_\_\_\_\_  
 MADE ON BEHALF OF: \_\_\_\_\_ (“Developer”)  
 MAJOR PHASE: \_\_\_\_\_ SUB-PHASE: \_\_\_\_\_

The undersigned hereby requests payment in the total amount of \$\_\_\_\_\_ for the reimbursement of Authorized Payments (as described in Exhibit B to that Acquisition and Reimbursement Agreement), to be paid solely from following Funding Sources:

<b>Funding Sources from which Authorized Payments may be Paid (check one or more boxes)</b>	<b>Identified Funding Sources</b>
	<b>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>Total Authorized Payment</b>	

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

In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth in this Payment Request.
2. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.
3. Developer is in compliance with the terms and provisions of the Acquisition and Reimbursement Agreement and no portion of the amount being requested to be paid was previously paid.
4. To the knowledge of the undersigned, Developer is not delinquent in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special

assessments levied on the regular County tax rolls against property owned by Developer in the Project Site.

I hereby declare that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge.

DEVELOPER:

[insert name of Developer]

By: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_

**Attachments:**

- Proof of Payment
- Authorized Payment Calculation

**DEEMED APPROVAL NOTICE**

**Under Section 5.2 of the Acquisition and Reimbursement Agreement,**

**if you fail to notify Developer that**

**this Payment Request is Approved or disapproved**

**within ten (10) 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