
EIFD ACQUISITION AND FINANCING AGREEMENT
(3333/3700 California Street)

by and among

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

LAUREL HEIGHTS PARTNERS, LLC,
a Delaware limited liability company,

CALIFORNIA 3700 LLC,
a Delaware limited liability company

and

SAN FRANCISCO
ENHANCED INFRASTRUCTURE FINANCING DISTRICT NO. 3
(3333/3700 California Street),
a legally constituted governmental entity

ARTICLE 1.	FUNDING.....	3
1.1	Use of EIFD Funding Sources	3
1.2	Exhibit A and Supplements to Exhibit A.....	3
1.3	Exhibit B and Supplements to Exhibit B	3
1.4	Review and Approval of Supplements	4
1.5	EIFD Funding Sources.....	6
1.6	Issuance of EIFD Bonds	6
1.7	Deposits of EIFD Funding Sources	8
1.8	Payment of Certain Costs.....	8
1.9	Financing Temporarily Excused	8
1.10	Information Related to Assessment Appeals.....	9
ARTICLE 2.	CONSTRUCTION OF ACQUISITION FACILITIES AND PRIVATELY-OWNED FACILITIES.....	9
2.1	Plan Documents	9
2.2	Obligation to Construct Acquisition Facilities and Privately-Owned Facilities.....	9
2.3	Relationship to Public Works Contracting Requirements	11
2.4	Independent Contractor.....	13
ARTICLE 3.	ACQUISITION AND PAYMENT OF ACQUISITION FACILITIES AND COMPONENTS.....	13
3.1	Inspection.....	13
3.2	Agreement to Sell and Purchase Acquisition Facilities.....	14
3.3	Component Financing.....	14
3.4	Defective or Nonconforming Work	15
3.5	Conveyance of Land, Title.....	15
ARTICLE 4.	PAYMENT REQUESTS FOR ACQUISITION FACILITIES AND COMPONENTS	15
4.1	Payment Requests	15
4.2	Processing Payment Requests for Acquisition Facilities and Components.....	17
4.3	Payment.....	18
4.4	Restrictions on Payments for Acquisition Facilities and Components	19
ARTICLE 5.	INSPECTION AND PAYMENT REQUESTS FOR PRIVATELY- OWNED FACILITIES AND COMPONENTS.....	20
5.1	Inspection; Authorized Payments	20

5.2	Component Financing	20
5.3	Processing Payment Requests for Privately-Owned Facilities and Components	21
5.4	Payment.....	22
5.5	Eligibility of Affordable Housing for Financing.....	23
ARTICLE 6.	PAYMENT REQUESTS GENERALLY; VESTING; COVENANTS	24
6.1	Application of Payment Requests.....	24
6.2	Partial Payments; Vested Payment Requests	25
6.3	Miscellaneous	25
6.4	Deposits.....	26
6.5	Waiver by 3700 California Street Developer.....	28
ARTICLE 7.	REPRESENTATIONS AND WARRANTIES.....	28
7.1	Representations and Warranties of Developer.....	28
7.2	Representations and Warranties of the City.....	28
7.3	Covenants of the City.....	29
7.4	Covenants of the Developer.....	29
7.5	Representations and Warranties of the EIFD.....	30
7.6	Covenants of the EIFD.....	30
7.7	Events of Defaults; Remedies	31
ARTICLE 8.	MISCELLANEOUS	32
8.1	Limited Liability of the City and the EIFD	32
8.2	Timelines.....	32
8.3	Attorneys' Fees	32
8.4	Notices	33
8.5	Successors and Assigns.....	33
8.6	Other Agreements	33
8.7	Waiver.....	33
8.8	Parties in Interest.....	33
8.9	Amendment.....	34
8.10	Counterparts.....	34
8.11	Interpretation of Agreement.....	34
8.12	Numbers	34
ARTICLE 9.	DEFINITIONS.....	35

9.1	Definitions.....	35
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Exhibit A	Description of EIFD Improvements to Be Financed for the Project
Exhibit B	Description of EIFD Improvements, with Cost Estimates
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 – Privately-Owned Facilities and Components
Exhibit D-1	Privately-Owned Facilities and Components to Which Payment Request Applies
Exhibit D-2	Calculation of Actual Cost
Exhibit E	Contracting Provisions for 3700 California Street Project
Exhibit F	Potential Change of Work Form

EIFD ACQUISITION AND FINANCING AGREEMENT (3333/3700 California Street)

This EIFD ACQUISITION AND FINANCING AGREEMENT (3333/3700 California Street) (including any Supplement, this “**Agreement**”), dated for reference purposes only as of _____, 2026, is by and among City, EIFD, 3333 California Street Developer, and 3700 California Street 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 Development Agreement.

RECITALS

A. Financing Plan. The City and the 3333 California Street Developer have entered into the Development Agreement to establish the contractual framework for mutual cooperation necessary to implement the 3333 California Street Project. Under the Development Agreement and the EIFD Law, the City agrees to acquire and reimburse the Actual Costs of Qualified EIFD Improvements; Qualified EIFD Improvements include both Acquisition Facilities and Privately-Owned Facilities that are of community-wide significance.

Under the Development Agreement and Chapter 43, Article X of the San Francisco Administrative Code, the City and the 3333 California Street Developer may, in the future, enter into a CFD Acquisition and Reimbursement Agreement under which the City agrees to acquire authorized improvements and reimburse Qualified Project Costs (as defined therein). If a CFD is formed over the 3333 California Street Project Site to finance capital facilities, many of the EIFD Improvements eligible to be funded by EIFD Funding Sources pursuant to this Agreement may also be eligible to be funded by CFD Funding Sources pursuant to the CFD Acquisition and Reimbursement Agreement. For those facilities that are eligible to be financed by both the EIFD and the CFD, the 3333 California Street Developer may utilize either or both of the CFD Funding Sources and the EIFD Funding Sources to finance such facilities, provided that the same costs are not financed by both sources (i.e., no double-dipping). In requisitioning for the reimbursement of Actual Costs of EIFD Improvements that may be financed by both the EIFD and the CFD, the 3333 California Street Developer may identify both EIFD Funding Sources and CFD Funding Sources as potential sources of funding (i.e., the 3333 California Street Developer does not have to specify the source of reimbursement until such time as EIFD Funding Sources and/or CFD Funding Sources are available to satisfy the applicable Payment Request).

The 3700 California Street Project is not subject to a development agreement and the 3700 California Street Developer is not eligible to be reimbursed with CFD Funding Sources. The 3700 California Street Project is subject to the Conditions of Approval.

B. Purpose of this Agreement. In accordance with the EIFD Law and the IFP, this Agreement describes the procedures by which, at the request of the 3333 California Street Developer or the 3700 California Street Developer, (i) the City will acquire Acquisition Facilities and Components and verify the related Actual Costs and (ii) the City will verify the Actual Costs of Privately-Owned Facilities and Components to be reimbursed to the applicable Developer, and (iii) the EIFD will pay the Actual Costs of Acquisition Facilities and Components and reimburse the Actual Costs of Privately-Owned Facilities and Components with the EIFD Funding Sources.

The City has allocated Allocated Tax Revenue and Conditional Tax Revenue to the EIFD for the purposes and for the period of time specified in the IFP. Under the EIFD Law, the sole purpose of the EIFD is to finance the public facilities and other projects specified in the IFP.

C. Developer. As used in this Agreement, unless otherwise stated, the term “Developer” may mean either the 3333 California Street Developer or the 3700 California Street Developer. As a general matter, each Developer shall be treated independently of the other Developer, and there shall be no joint liability and no cross-defaulting between the 3333 California Street Developer and the 3700 California Street Developer. A default by one Developer shall not be deemed a default by the other Developer.

D. Acknowledgements. The City, the EIFD, the 3333 California Street Developer, and the 3700 California Street Developer acknowledge the following:

(1) Each Developer may construct EIFD Improvements before the proceeds of EIFD Bonds and Allocated Tax Revenue (together, “**EIFD Funding Sources**”) that will be used to acquire them or pay the Actual Costs of related Qualified EIFD Improvements, as applicable, are available.

(2) The City shall inspect such improvements and process Payment Requests even if EIFD Funding Sources for the amount of pending Payment Requests are not then sufficient to satisfy them in full.

(3) Acquisition Facilities to be acquired by the City or other Governmental Entity may be conveyed to and accepted by the City or other Governmental Entity before the applicable Payment Requests are paid in full. Likewise, Privately-Owned Facilities may be conveyed to the owner thereof before the applicable Payment Requests are paid in full.

(4) The unpaid balance of applicable Payment Requests shall be paid by the EIFD when sufficient EIFD Funding Sources become available, whether or not at such time the City, or other Governmental Entity, or other person has accepted the relevant improvements, and such payments may be made: (A) in any number of installments as EIFD Funding Sources become available; (B) irrespective of the length of time payment is deferred; and (C) except with respect to the final payment for any Acquisition Facility to be acquired by the City or any other Governmental Entity, prior to formal acceptance by the City or the Governmental Entity of the Acquisition Facility that is the subject of such Payment Requests.

(5) Developer’s conveyance or dedication of Acquisition Facilities to the City or other Governmental Entity before the availability of EIFD Funding Sources to acquire such Acquisition Facilities is not a dedication or gift or a waiver of Developer’s right to payment of such Acquisition Facilities under the Financing Plan or this Agreement. Likewise, Developer’s conveyance or dedication of Privately-Owned Facilities to the applicable person before the availability of EIFD Funding Sources to reimburse for such Privately-Owned Facilities is not a dedication or gift or a waiver of Developer’s right to payment of such Privately-Owned Facilities under the Financing Plan or this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the 3333 California Street Developer, the 3700 California Street Developer, the EIFD, and the City hereby agree as follows:

ARTICLE 1 FUNDING

1.1 Use of EIFD Funding Sources. This Agreement: (a) implements (and is subject to all limitations of) the allocation by the City to the EIFD of the Allocated Tax Revenue and the Conditional Tax Revenue (as limited by the IFP) and the authorized use by the EIFD of the Allocated Tax Revenue and the Conditional Tax Revenue, each as set forth in the IFP; (b) will become effective on the full execution and delivery of this Agreement (the “**Effective Date**”); and (c) describes the procedures by which, at the applicable Developer’s request, the EIFD will use available EIFD Funding Sources to make payments to such Developer for the Actual Costs of the EIFD Improvements.

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 EIFD Funding Sources under this Agreement. Exhibit A sets forth: (a) reasonably detailed descriptions of all of the Acquisition Facilities; and (b) reasonably detailed descriptions of all of the Privately-Owned Facilities. At any time, a 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 and Privately-Owned Facilities.

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 Privately-Owned Facilities for which construction contracts have been executed, and the estimated Actual Costs that are to be reimbursed under this Agreement. Exhibit B shall initially include all Qualified EIFD Improvements that are the subject of construction contracts executed as of the Effective Date of this Agreement and their estimated Actual Costs. For purposes of clarity, at the Effective Date, Exhibit B may say “TBD” if there are no such executed construction contracts executed as of the Effective Date. Exhibit B shall include costs specific to Acquisition Facilities and Privately-Owned Facilities based on an executed contract or permit (e.g., street improvement permit, demolition permit, building permit et al.) and all other estimated Actual Costs of the Acquisition Facilities and Privately-Owned Facilities that may or may not be subject to a construction contract, with an explanatory note as to which estimated Actual Costs are not subject to a construction contract and how the related work will be performed. The City and County of San Francisco Department of Public Works (the “**Department of Public Works**”) will be the lead City agency to facilitate coordinated review of certain aspects of the Project in accordance with the MOU and will assist the City as provided under this Agreement. With respect to Qualified EIFD Improvements other than the Walnut Affordable Housing Building, the Department of Public Works will be the lead City agency responsible for review and verification of the Actual Costs of Acquisition Facilities (or Components thereof) or Privately-Owned Facilities (or Components thereof) listed in Exhibit B in accordance with the MOU, and MOHCD will be responsible for the review and verification of the Actual Costs of the Walnut Affordable Housing

Building and verification of payment of the 3700 California Street Affordable Housing In-Lieu Fees. Upon completion of its review, MOHCD will submit to the Department of Public Works a written summary of its review and evaluation signed by the MOHCD Director (or the Director's designee); no further review shall be required by MOHCD in connection with the submission by the 3333 California Street Developer of a Payment Request related to the Walnut Affordable Housing Building as long as the Payment Request is consistent with the Third Party cost certification or audit provided pursuant to Section 5.3(c)(iv) hereof. The Parties understand and agree that any costs identified on Exhibit B are estimates only and shall not limit the payment of the Actual Costs in any way (i.e., such amounts are not budgets, but only estimates).

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 all or any portion of the Acquisition Facilities set forth on Exhibit A for which construction contracts have been executed, including the identification and detail of any Components of the Acquisition Facilities; (b) provide estimates of the Actual Costs of all or any portion of the Acquisition Facilities set forth on Exhibit A for which construction contracts have been executed, including of any Components thereof; (c) describe and provide detail on all or any portion of the Privately-Owned Facilities set forth on Exhibit A for which construction contracts have been executed, including the identification and detail of any Components of the Privately-Owned Facilities (other than costs associated with the Walnut Affordable Housing Building); (d) provide estimates of the Actual Costs of all or any portion of the Privately-Owned Facilities for which construction contracts have been executed, including of any Components thereof (other than costs associated with the Walnut Affordable Housing Building); and (e) otherwise update or modify any other information in Exhibit B. The Parties agree that the EIFD will not be obligated to pay Developer for the Actual Costs of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) under this Agreement unless such Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) is set forth on Exhibit B.

1.4 Review and Approval of Supplements. The Department of Public Works will review and verify the Actual Costs of Acquisition Facilities (or Components thereof) or Privately-Owned Facilities (or Components thereof) other than the Walnut Affordable Housing Building contained in any Supplements submitted under this Agreement, and MOHCD will review and verify the Actual Costs of the Walnut Affordable Housing Building contained in any Supplements submitted under this Agreement, in each case subject to the following:

(a) Upon Developer's written request, the Department of Public Works or MOHCD, as applicable, 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 Department of Public Works or MOHCD, as applicable, will make reasonable efforts to accept or object in writing to all or any portion of the proposed Supplement within thirty (30) calendar days after receipt of a proposed Supplement submitted with such Developer's written request for review and approval. Such Developer may resubmit any proposed Supplement to which the Department of Public Works or MOHCD, as applicable, has timely objected, and the Department of Public Works or MOHCD, as applicable, 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).

(b) The Department of Public Works or MOHCD, as applicable, 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, Section 1.3 or Section 1.4, as applicable, and any supporting materials reasonably requested in writing by the Department of Public Works or MOHCD, as applicable, in connection with the proposed Supplement. Proposed Supplements for the Walnut Affordable Housing Building shall, in addition to the information set forth in Section 1.3, include as supporting materials (i) an estimate of proposed sources and uses, (ii) copies of any applications submitted for local, State or Federal grant or loan financing, (iii) a copy of (A) the Notice of Special Restrictions (Affordable Housing) and (B) if the Notice of Special Restrictions (Affordable Housing) does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law, and (iv) the most detailed currently available set of building Plans. Proposed Supplements for the Walnut Affordable Housing Building shall also include as supporting material an estimate of projected operating cash flow at stabilization. The Supplement Review Period will be tolled as to a Supplement for which the Department of Public Works or MOHCD, as applicable, has reasonably requested additional information or materials, until such requested information or materials have been provided to the Department of Public Works or MOHCD, as applicable. Within the Supplement Review Period, as it may be tolled under this Section 1.4(b), the Department of Public Works or MOHCD, as applicable, will send a notice of approval or disapproval to the applicable Developer. Any notice of disapproval must state with specificity the Department of Public Works' or MOHCD's, as applicable, 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) for the 3333 California Street Project only, a proposed Acquisition Facility or Privately-Owned Facility is not contemplated to be financed by the Development Agreement (including the Financing Plan); or (B) for both the 3333 California Street Project and the 3700 California Street Project, a proposed Acquisition Facility or Privately-Owned Facility is not eligible to be financed under the IFP, the Governing Acts, or this Agreement.

(ii) For disapproval of a proposed Supplement to Exhibit B: (A) the specified Acquisition Facilities or Privately-Owned Facilities are not listed on, or derived from, Exhibit A; (B) the specified Walnut Affordable Housing Building does not comply with the Housing Plan or Section 5.5 of this Agreement; (C) the Actual Costs (less Third Party Reimbursements) of the specified Walnut Affordable Housing Building exceed the amounts set forth in the project completion audit or cost certification required by Section 4.2(d); or (D) specified Components are not components of the Acquisition Facilities or Privately-Owned Facilities listed on Exhibit A.

(c) Any proposed Supplement 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.

(d) In addition to the requirements set forth in this Section 1.4, the Department of Public Works and each Developer agree to form a review panel (“**Review Panel**”) consisting of up to three members from the City (including its project managers from the Department of Public Works and the Office of Economic and Workforce Development), and up to

three members from either Developer (including its construction manager(s)). Each of the Developer and the Public Works Director may invite representatives of MOHCD to participate in weekly working meetings. The purpose of the Review Panel is to conduct (up to) weekly working meetings to review, before they are submitted to the Department of Public Works or MOHCD, as applicable, proposed Exhibit B Supplements and any proposed change orders. The Review Panel will use good faith efforts to resolve issues with proposed Exhibit B Supplements and change orders before they are submitted to the Department of Public Works or MOHCD, as applicable, and conduct well-organized review meetings. In addition, if requested to do so by either Developer, the Review Panel shall discuss any failures of the City described in Section 8.2 and use good faith efforts to resolve any existing failures and avoid future failures.

1.5 EIFD Funding Sources.

(a) The EIFD will not be obligated to pay all or any part of the Actual Cost of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) under this Agreement except from EIFD Funding Sources or any other sources that are mutually agreed to by the City, the EIFD, and Developer. Except for the Allocated Tax Revenue and the Conditional Tax Revenue (to the limited extent described in the IFP) that the City has allocated to the EIFD pursuant to the EIFD Law, unless otherwise agreed to in writing by the Parties, in no circumstances shall the City's General Fund, credit, taxing power or revenues other than the EIFD Funding Sources be pledged or be available to pay all or any part of the Actual Cost of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof), nor shall the EIFD have any liability to pay all or any part of the Actual Cost of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) if the Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) is determined by the City to be ineligible to be financed under the Governing Acts, even if the City or the Department of Public Works or MOHCD, as applicable, did not object to the Payment Request or Supplement listing it on the grounds of ineligibility.

(b) Developer acknowledges that if the City, the EIFD, and the 3333 California Street Developer agree to issue escrow bonds as part of an issuance of EIFD Bonds and funds are deposited in an escrow fund, escrowed amounts will become EIFD 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 EIFD 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) Neither the City nor the EIFD make any warranty, express or implied, that EIFD Funding Sources will be sufficient to pay for all of the EIFD Improvements. Other than as contemplated by the EIFD Funding Sources or as otherwise agreed to in writing by the Parties, in no circumstances shall the City's credit, taxing power or General Fund or any revenues other than the EIFD Funding Sources be pledged to or be available to pay all or any part of the Actual Cost of the EIFD Improvements.

1.6 Issuance of EIFD Bonds.

(a) EIFD Bonds will not be issued by the EIFD except upon the written request of the 3333 California Street Developer made to the EIFD and the City. The proceeds of

each series of EIFD Bonds shall be deposited, held, invested, reinvested, and disbursed as provided in the Indenture, subject to compliance with the IFP and this Agreement. Other than payment of EIFD administrative costs, the net proceeds of the EIFD Bonds (after paying costs of issuance and capitalized interest and establishing debt service reserve funds) shall be used to finance the Actual Cost of EIFD Improvements.

(b) The City shall allocate the Conditional Tax Revenue to the EIFD to provide debt service coverage for the EIFD Bonds, and the Conditional Tax Revenue will only be available for the limited purpose of paying debt service on the EIFD Bonds and replenishing any reserve funds for the EIFD Bonds in the event that Allocated Tax Revenue is insufficient for that purpose. After first paying or setting aside amounts needed for debt service due during such Fiscal Year on the EIFD Bonds secured by or payable from Allocated Tax Revenue and replenishing any reserve funds for the EIFD Bonds, the EIFD shall repay the City out of the Allocated Tax Revenue for any Conditional Tax Revenue actually used to pay debt service on EIFD Bonds as set forth in the IFP, plus interest as provided in Section 7.6(e)(iii) herein. After the Conditional Tax Revenue so used is repaid in full, then any Allocated Tax Revenue remaining shall be reserved for and/or applied to finance the Qualified EIFD Improvements.

(c) Prior to requesting the issuance of EIFD Bonds, the 3333 California Street Developer will consult with the City's Controller (or the Controller's designee). The Controller will recommend that the Board of Supervisors approve an issue of EIFD Bonds if the Controller has determined that (1) the issue will be consistent with sound municipal financing practices, (2) the issue will be consistent with the EIFD Law, the IFP and the Financing Plan, and (3) the City is assured, to its reasonable satisfaction, based on actual and projected reasonably foreseeable economic conditions that could have an impact on the assessed value of the property in the EIFD, that the EIFD Bonds are structured in a manner that (A) mitigates any potential material risk that the EIFD could default in the payment of debt service on the EIFD Bonds and (B) provides reasonable assurance to the City that the Conditional Tax Revenue would likely be available to the City's General Fund and unlikely to be needed to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds.

(d) The Board of Supervisors will consider all requests to approve the issuance of EIFD Bonds in accordance with its customary practices based on the record before it, which shall include the Controller's recommendation and a description of the requirements of the Financing Plan. Any issue of EIFD Bonds will be structured with a debt service coverage ratio and term that maximizes the proceeds of the EIFD Bonds provided (i) such EIFD Bonds are issued consistent with sound municipal financing practices and Section 3.4(g) of the Financing Plan after consultation with the Controller's Office of Public Finance, and (ii) the City is assured, to its reasonable satisfaction, based on actual and projected reasonably foreseeable economic conditions that could have an impact on the assessed value of the property in the EIFD, that the EIFD Bonds are structured in a manner that (A) mitigates any potential material risk that the EIFD could default in the payment of debt service on the EIFD Bonds and (B) provides reasonable assurance to the City that that the Conditional Tax Revenue would likely be available to the City's General Fund and unlikely to be needed to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds. The City may implement other bond structure elements that it determines are consistent with sound municipal financing practices and Section 3.4(g) of the Financing Plan, including requiring one or more debt service reserve funds.

(e) In addition to federally tax-exempt EIFD Bonds, at the request of the 3333 California Street Developer, the EIFD shall consider the issuance of one or more series of federally taxable EIFD Bonds to finance the Actual Cost of any EIFD Improvements that cannot be financed on a federally tax-exempt basis. In addition, the EIFD shall issue federally taxable EIFD Bonds in the circumstances required by Section 3.6(e) of the Financing Plan.

(f) Upon any such request by the 3333 California Street Developer to issue EIFD Bonds, the EIFD shall utilize and consult with the City's Office of Public Finance as to the timing, parameters, and terms of any EIFD Bonds consistent with this Agreement. The City has informed the EIFD, the 3333 California Street Developer, and the 3700 California Street Developer that the Office of Public Finance (or a successor agency identified by the City) will provide those services to the EIFD for the term of the EIFD.

1.7 Deposits of EIFD Funding Sources.

(a) The proceeds of any EIFD Bonds 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 any EIFD Bonds that is used to fund reserves for debt service, to capitalize interest on the EIFD Bonds, and to pay costs of issuance and administration will not constitute EIFD Funding Sources.

(b) Pursuant to the Financing Plan and the IFP, the Allocated Tax Revenue generated from the property in the EIFD may be deposited and held in, and invested, reinvested, and disbursed to finance EIFD Improvements.

(c) Developer agrees that the EIFD alone will direct the investment of EIFD Funding Sources in accordance with the EIFD's investment policy and all applicable laws and the applicable Indenture. The EIFD will have no responsibility to either Developer with respect to any investment of EIFD 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 EIFD's investment policy and all applicable laws and the applicable Indenture, even if a loss diminishes the amount of available EIFD Funding Sources.

1.8 Payment of Certain Costs. The City, the EIFD, and each Developer agree that certain professional and consulting costs that Developer, the City and the EIFD incur in connection with the formation of the EIFD and the issuance of EIFD Bonds will be financed with proceeds of the EIFD Bonds or Allocated Tax Revenue to the extent permitted by the EIFD Law.

1.9 Financing Temporarily Excused. The City and the EIFD shall be authorized to temporarily suspend the issuance of any EIFD Bonds in the circumstances described in Section 1.4 of the Financing Plan. For the avoidance of doubt in light of Section 2.2(c) herein, the City, the EIFD, and each Developer agree that subsections (b) (clauses (i)-(iii)) and (c) (clauses (i) and (ii)) of Section 1.4 of the Financing Plan may only be invoked if the EIFD Developer (as defined in Section 2.2(c) herein) has satisfied those subsections. Subsections (b) (clauses (i)-(iii)), and (c)

(clauses (i) and (ii)) of Section 1.4 of the Financing Plan may not be invoked against an EIFD Developer as a result of the actions of any other party, including but not limited to any other Developer under the Development Agreement or any other EIFD Developer that has taken an assignment pursuant to an EIFD Assignment in accordance with Section 8.5 of this Agreement. Nothing in the two preceding sentences shall be construed to limit the exercise by the City or the EIFD of its judgment under Section 1.4(b)(iv) or Section 1.4(c)(iii) of the Financing Plan.

1.10 Information Related to Assessment Appeals. Prior to the issuance of any EIFD Bonds, (a) each Developer shall represent in writing to the City, the EIFD, and the underwriter of such EIFD Bonds, in a form reasonably acceptable to the City, the EIFD, and the underwriter, that such Developer and each of its respective affiliated entities that own land in the EIFD do not have plans to file any appeals (that are not otherwise described in the disclosure document for the EIFD Bonds) of the assessed value of their respective taxable property determined by the Assessor for the then-current fiscal year or any previous fiscal year, (b) each Developer shall cause any other developer landowner in the EIFD that is not an affiliated entity of such Developer to represent in writing to the City, the EIFD, and the underwriter, in a form reasonably acceptable to the City, the EIFD, and the underwriter, that such other developer landowner that owns land in the EIFD does not have plans to file any appeals (that are not otherwise described in the disclosure document for the EIFD Bonds) of the assessed value of their respective taxable property determined by the Assessor for the then-current fiscal year or any previous fiscal year, and (c) each Developer shall otherwise reasonably cooperate with the City, the EIFD, and the underwriter to make such inquiries as are reasonably necessary to ensure that the information contained in the disclosure document for the EIFD Bonds regarding assessment appeals is accurate and not materially misleading, including using commercially reasonable efforts to contact other entities that own material amounts of property in the EIFD to inquire about their plans to appeal assessed values of their taxable property determined by the Assessor for the then-current fiscal year or any previous fiscal year.

ARTICLE 2

CONSTRUCTION OF ACQUISITION FACILITIES AND PRIVATELY-OWNED FACILITIES

2.1 Plan Documents. Developer will prepare and obtain approval by each applicable Governmental Entity of all Plans for the Acquisition Facilities and Privately-Owned Facilities from the City and, for the 3333 California Street Project only, in accordance with, and at the times necessary to comply with the provisions of the Development Agreement, and, for the 3700 California Street Project only, in accordance with, and at the times necessary to comply with the provisions of the Conditions of Approval.

2.2 Obligation to Construct Acquisition Facilities and Privately-Owned Facilities.

(a) This Agreement does not create an obligation to construct any Acquisition Facility or Privately-Owned Facility. This Article 2 applies only to those Acquisition Facilities or Privately-Owned Facilities for which a Developer seeks the payment of the Actual Costs under this Agreement. For the 3333 California Street

Project only, the 3333 California Street Developer's obligation to construct the Acquisition Facilities and the Privately-Owned Facilities is governed by the Development Agreement. The City, the EIFD, and the Developer acknowledge that the EIFD is expected to have a term that will extend beyond the term of the Development Agreement and agree that this Agreement shall survive any termination of the Development Agreement except as provided in subsection (b) below.

(b) If the Development Agreement has terminated as to the property owned by the Developer that is a party to this Agreement (herein, for purposes of this Section 2.2, the **"EIFD Developer"**) for any reason other than a Default (as defined in the Development Agreement) by the EIFD Developer, and subject to Section 1.4 of the Financing Plan, then the EIFD Developer will still be eligible to finance EIFD Improvements (including any subject to a Vested Payment Request) with EIFD Funding Sources to the extent the Developer Commenced Construction of such EIFD Improvements prior to termination of the Development Agreement with respect to the property owned by the EIFD Developer or the EIFD Improvement is required as part of a Public Improvement Agreement approved prior to the termination of the Development Agreement with respect to the property owned by the EIFD Developer. If the Development Agreement has terminated because of a Default (as defined in the Development Agreement) by the EIFD Developer, then the EIFD Developer will no longer be eligible to finance EIFD Improvements with EIFD Funding Sources other than with respect to any EIFD Improvements subject to a Vested Payment Request, which shall remain eligible to be financed with EIFD Funding Sources notwithstanding termination of the Development Agreement due to a Default by the EIFD Developer.

(c) In accordance with Section 9.3 of the Development Agreement, there shall be no cross-defaults between separate Parties under the Development Agreement, and a Default (as defined in the Development Agreement) by one Developer or Transferee under the Development Agreement shall not be a Default by any other Developer under the Development Agreement that owns or controls a different portion of the Project Site. Accordingly, and notwithstanding any other provision in this Agreement to the contrary, if the Development Agreement is terminated due to a Default by a Developer or Transferee that is not the EIFD Developer, such Default and resulting termination shall not in any way limit or impair the eligibility of the EIFD Developer to finance EIFD Improvements with EIFD Funding Sources. If there are multiple EIFD Developers under this Agreement following a transfer pursuant to an EIFD Assignment in accordance with Section 8.5 of this Agreement, a Default and resulting termination of the Development Agreement with respect to one EIFD Developer shall in no way limit or impair the eligibility of any non-defaulting EIFD Developer to finance EIFD Improvements with EIFD Funding Sources. Nothing in this Section 2.2(c) shall be construed to limit the exercise by the City or the EIFD of its judgment under Section 1.4(b)(iv) or Section 1.4(c)(iii) of the Financing Plan.

(d) For the 3700 California Street Project only, the 3700 California Street Developer's obligation to construct the Acquisition Facilities and

the Privately-Owned Facilities is governed by the Conditions of Approval. With respect to the 3700 California Street Project, if the Conditions of Approval have terminated for any reason other than a default by the 3700 California Street Developer, and subject to Section 1.4 of the Financing Plan, the 3700 California Street Developer will still be eligible to finance EIFD Improvements (including any subject to a Vested Payment Request) with EIFD Funding Sources to the extent the 3700 California Street Developer Commenced Construction of such EIFD Improvements prior to termination of the Conditions of Approval or the EIFD Improvement is required as part of a Public Improvement Agreement approved prior to the termination of the Conditions of Approval. If the Conditions of Approval have terminated because of a default by the 3700 California Street Developer, then the 3700 California Street Developer will no longer be eligible to finance EIFD Improvements other than with respect to any EIFD Improvements subject to a Vested Payment Request, which shall remain eligible to be financed with EIFD Funding Sources notwithstanding the termination of the Conditions of Approval.

2.3 Relationship to Public Works Contracting Requirements.

(a) This Agreement provides for the acquisition of the Acquisition Facilities (or Component thereof) and reimbursement of the Actual Costs of Privately-Owned Facilities (or Component thereof) from time to time from EIFD Funding Sources and is not intended as a public works contract. The Parties acknowledge and agree that the Acquisition Facilities and Privately-Owned Facilities 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 or Privately-Owned Facilities. The City, the EIFD, and each Developer further acknowledge and agree that any public works contracting requirements of the City are not applicable to the construction and acquisition of the Acquisition Facilities or Privately-Owned Facilities. The 3333 California Street Developer and the 3700 California Street Developer acknowledge that EIFD Funding Sources can only pay for the Actual Costs of Acquisition Facilities or Privately-Owned Facilities where prevailing wages were paid for such EIFD Improvements. With respect to the 3333 California Street Developer only, nothing in this Section 2.3(a) shall limit or alter the requirements of the Development Agreement, including without limitation, the payment of prevailing wages as set forth in the Development Agreement. Notwithstanding the foregoing, each of the 3333 California Street Developer and the 3700 California Street Developer acknowledges that EIFD Funding Sources can only pay for the Actual Costs of Acquisition Facilities or Privately-Owned Facilities where prevailing wages were paid for such EIFD Improvements.

(b) Developer will utilize its business judgment to solicit proposals and award contracts in the manner it deems most suited to achieving the lowest Actual Costs from qualified and responsible contractors for each EIFD Improvement. Such methods may vary depending upon the nature of the work and the EIFD Improvement and may include the solicitation of competitive bids from qualified contractors for hard costs. For the 3333 California Street Project only, the 3333 California Street Developer agrees to award all contracts and execute all contract change orders for construction of the Acquisition Facilities and Privately-Owned Facilities in accordance with the Development Agreement requirements and, to the extent applicable, Exhibit E attached hereto. For the 3700 California Street Project, the 3700 California Street Developer

agrees to award all contracts and execute all contract change orders for construction of the Acquisition Facilities and Privately-Owned Facilities in accordance with the requirements set forth in Exhibit E attached hereto and the Conditions of Approval. The applicable Developer agrees to provide copies of all executed contracts and contract change orders for the Acquisition Facilities or Privately-Owned Facilities that are being financed under this Agreement to the Department of Public Works or MOHCD, as applicable, along with a written summary of the process by which such Developer solicited proposals and awarded contracts.

(c) Developer shall be responsible for entering into all change orders required for the construction of the EIFD Improvements. Developer shall make reasonable efforts to submit change order work documentation to the Review Panel created pursuant to Section 1.4(d) accompanied by a Potential Change of Work (“PCOW”) form to confirm funding eligibility and to obtain City acknowledgment prior to implementing changes. The City shall make reasonable efforts to review the PCOW for courtesy concurrence within five (5) business days, but such review and courtesy concurrence shall not constitute an approval for reimbursement. The form of PCOW is attached hereto as Exhibit F. The Parties acknowledge that Developer may under certain circumstances need to cause the contractor to commence implementing such changes in the field prior to the review of the PCOW by the Review Panel; in such event, the Developer may commence such work and thereafter shall submit the change work order documentation accompanied by a PCOW to the City immediately after the work has commenced for courtesy concurrence by the City within five (5) business days (which courtesy concurrence shall not constitute an approval for reimbursement). To the extent that a PCOW has been submitted and acknowledged by the Review Panel, the Developer shall submit a copy of such PCOW when requisitioning for the Actual Costs of the work that was the subject of the PCOW.

(d) From time to time at the request of the City, representatives of Developer must meet and confer with the City, Department of Public Works staff and MOHCD staff, as applicable, consultants, and contractors regarding matters arising under this Agreement with respect to the Acquisition Facilities or Privately-Owned Facilities, and the progress in constructing and acquiring the same, and as to any other matter related to the Acquisition Facilities or Privately-Owned Facilities, or this Agreement. The City, Department of Public Works staff and MOHCD staff, as applicable, 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 Privately-Owned Facilities; 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 Privately-Owned Facilities.

Developer will not enter into contracts for Acquisition Facilities or Privately-Owned Facilities with suspended or debarred contractors. A current list of such contractors can be found on the City’s website: <https://sf.gov/resource/2022/suspended-and-debarred-contractors#>. In addition, Developer will, to the extent it is legally permitted to and may do so without penalty to the Developer, terminate contracts for Acquisition Facilities or Privately-Owned Facilities with contractors that were suspended or debarred after the contracts were executed. City will not approve financing for costs of Acquisition Facilities or Privately-Owned Facilities where the work was performed by a suspended or debarred contractor to the extent that the work was performed after the contractor was suspended or debarred and it was legally permitted for the Developer to terminate the contract without penalty to the Developer.

2.4 Independent Contractor.

(a) In performing under this Agreement, each Developer is an independent contractor and not the agent or employee of the City or the EIFD. Except as otherwise provided in this Agreement, the EIFD will not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of any Developer.

(b) The City has determined that it would obtain no advantage by directly undertaking the construction of the Acquisition Facilities or the Privately-Owned Facilities.

ARTICLE 3 ACQUISITION AND PAYMENT OF ACQUISITION FACILITIES AND COMPONENTS

3.1 Inspection.

(a) This Article 3 applies only to those Acquisition Facilities and Components for which a Developer seeks the payment of Actual Costs under this Agreement. This Article 3 does not apply to Privately-Owned Facilities or Components thereof. The City and the Developer agree that nothing in this Agreement is intended to supersede or replace the process of construction, inspection and acceptance of the Acquisition Facilities set forth in any applicable Public Improvement Agreement.

(b) Except as set forth in Section 3.3, the EIFD will not be obligated to pay the Actual Costs of Acquisition Facilities or Components under this Agreement to a Developer until the applicable Acquisition Facility or Component has been inspected and determined in writing by the Director of Public Works to be Ready for Payment. Subject to Section 3.3 herein, for purposes of clarification, for a Component that is dependent on the completion of other Components to actually be operational, the term "ready for its intended use" (as such term is used in the definition of "Ready for Payment") 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, the Director of Public Works will make a reasonable effort to 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 such Developer believes in good faith are Ready for Payment (the "**Inspection Request**"). Within the five (5) business days time period discussed above, the applicable City agencies will make a reasonable effort to schedule the requested inspection to occur within fourteen (14) calendar days but in any event not to exceed twenty-one (21) calendar days from the date of receipt of the Inspection Request. Within five (5) business days following the completion of the inspection, the Director of Public Works shall notify the applicable Developer and the EIFD of the results of the inspection by providing an Acquisition Facility Completion Confirmation or by providing a punch list of items to be corrected.

(d) The City and the Developer may mutually agree by letter agreement signed by their authorized representatives, and without executing an amendment of this Agreement, to modify the time for inspections set forth in this Section 3.1.

3.2 Agreement to Sell and Purchase Acquisition Facilities. To the extent that Acquisition Facilities and Components are not already owned by the City or a Governmental Entity, Developer agrees to convey Acquisition Facilities and Components to the City or other Governmental Entity(ies), and the EIFD agrees to use available EIFD Funding Sources to pay the Actual Cost of the Acquisition Facilities and Components to such Developer, subject to this Agreement and the Financing Plan. This Agreement does not require that the conveyance of Acquisition Facilities and Components to the City or other Governmental Entity include the sale of the fee ownership in private property that is subject to an easement for the benefit of the City or the general public.

3.3 Component Financing.

(a) This Agreement authorizes the purchase of a Component of an Acquisition Facility where such Acquisition Facility has 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 Department of Public Works. Subject to the availability of EIFD Funding Sources, the City agrees to pay to Developer the Actual Costs 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 or other Governmental Entity of title to the Acquisition Facility and the property underlying the applicable Component or the grant of easement rights with respect to such property, as applicable. 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 Supplement).

(b) If the estimated cost of an Acquisition Facility exceeds one million dollars (\$1,000,000), this Agreement authorizes the purchase of Components whether or not the Components are capable of serviceable use. Subject to the availability of EIFD Funding Sources, the EIFD agrees to pay to Developer the Actual Costs 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 or other Governmental Entity of title to the Acquisition Facility and the property underlying the Component or the grant of easement rights with respect to such property, as applicable. 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 Supplement). As used in this Agreement, the term Component means:

- (i) segments of Acquisition Facilities (e.g., a segment of a water line);
- or
- (ii) incremental completion of an Acquisition Facility (i.e., progress payments).

(c) Soft costs may be paid as part of the Actual Cost of any Component. In addition, soft costs for more than one Acquisition Facility may be submitted for approval as they occur in advance of construction of such Acquisition Facility provided that the soft costs apply to an Acquisition Facility or Component listed in Exhibit A or Exhibit B.

(d) Each Developer acknowledges that the City 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. The City and EIFD acknowledge that a Component does not have to be accepted by the City or other Governmental Entity as a condition precedent to the payment of the Actual Costs of the Component.

(e) 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 in any material respect or not in conformance, in all material respects, with the applicable Plans and the Existing Standards and such finding is made: (a) prior to payment of the Actual Costs of such Acquisition Facility or Component, the EIFD 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 of such Acquisition Facility or Component, then the City's policies and procedures will govern cure rights and obligations (including, for the 3333 California Street Project only, the Development Agreement and, for the 3700 California Street Project only, the Conditions of Approval).

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 Existing Standards (and for the 3333 California Street Project only, the Development Agreement and, for the 3700 California Street Project only, the Conditions of Approval).

ARTICLE 4

PAYMENT REQUESTS FOR ACQUISITION FACILITIES AND COMPONENTS

4.1 Payment Requests. This Article 4 applies only to those Acquisition Facilities and Components for which Developer seeks the payment of Actual Costs under this Agreement. Except as set forth in Section 5.4 herein, this Article 4 does not apply to Privately-Owned Facilities (or Components thereof).

(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 Identified Funding Sources that are eligible to be used to pay it, together with all required supporting documents, attachments, and exhibits, all in an organized manner. Required attachments include:

and (i) a copy of the Acquisition Facility Completion Confirmation;

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

(b) In addition to those items listed in Section 4.1(a) above, any Payment Request for a Component must be supported by the following documentation:

(i) a completed copy of Exhibit C-1 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) In addition to those items listed in Section 4.1(a) above, any Payment Request for a Completed Acquisition Facility or the final Component thereof 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 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 or other Governmental Entity, as applicable;

(ii) a copy of the Acquisition Facility 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 or other Governmental Entity, as applicable, with respect to any Acquisition Facility for which the Developer does not have ongoing maintenance and repair responsibilities;

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

(v) 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

(vi) 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 in writing 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 (which shall be subject to review in accordance with Section 4.3(b)), 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, subject to Section 3.1;

(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 that apply to more than one Acquisition Facility or Component or both Acquisition Facilities or Components and other improvements (e.g., inspection fees, plan review fees, etc.), as allocated between the Acquisition Facilities or Components and, if applicable, the other improvements.

(e) Acceptance by the City or other Governmental Entity of an Acquisition Facility or Component is not a condition to the payment of the Actual Cost of such Acquisition Facility or Component. Payment of the Actual Cost of an Acquisition Facility or Component shall not constitute acceptance by the City or other Governmental Entity of such Acquisition Facility or Component.

4.2 .Processing Payment Requests for Acquisition Facilities and Components.

(a) Within twenty-one (21) 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 of Public Works to complete the review. 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. In reviewing a Payment Request, the Director of Public Works will also review the Developer Allocations. If the Director of Public Works objects 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**”).

(b) Within thirty (30) calendar days after the date a Payment Request is determined 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 return the Payment Request to Developer who may amend it to remove the portion that was disapproved and then resubmit it for approval. Upon receipt of the revised Payment Request omitting the disapproved portion, the Director of Public Works will forward the Payment Request to the EIFD for payment under Section 4.3. Developer may resubmit the portion of any Payment Request that was disapproved 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 twenty-one (21) calendar days, although the Director of Public Works will make a reasonable effort to review it more quickly.

(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 as to any Payment Request, until Developer has provided any additional information or documentation that the Director of Public Works has reasonably requested under Section 4.2(a) or Section 4.2(b).

(d) The City will hire one or more Third Party consultants to review Payment Requests for Acquisition Facilities and Privately-Owned Facilities other than the Walnut Affordable Housing Building. For Payment Requests related to the Walnut Affordable Housing Building, the 3333 California Street Developer will hire one or more qualified certified public accounting or other accounting firms that are licensed in the State of California to prepare project completion audits or cost certifications evidencing all Actual Costs incurred and Third Party Reimbursements received. The costs (which may include the City's bond counsel) associated with the 3333 California Street Developer's preparation and City's review of Payment Requests submitted pursuant to this Agreement shall be payable from EIFD Funding Sources. The costs of the Third-Party consultants, accountants, and other costs paid herein shall be part of the Actual Cost of the Acquisition Facilities and Privately-Owned Facilities.

(e) The process for review of the Payment Requests for Acquisition Facilities and Components thereof is subject to Article 6.

4.3 Payment.

(a) Within five (5) business days after (i) approving a Payment Request, and (ii) receipt of the Acquisition Facility Completion Confirmation, the Director of Public Works will forward the counter-signed approved Payment Request to the EIFD.

(b) The EIFD must pay the Actual Costs to the extent of available Identified Funding Sources within fifteen (15) business days after the EIFD's receipt of a counter-signed approved Payment Request. At the written request of Developer, the EIFD will make payments under any approved Payment Requests directly to a Third Party, such as a contractor or supplier of materials, subject to receiving sufficient backup information about such Third Party and only if the Third Party is in the City's payment vendor system.

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) Subject to Section 4.4(d), the City will withhold delivery of the counter-signed Payment Request for the 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, that is not owned by the City or other Governmental Entity until Acceptable Title to such land has been conveyed to the City or other Governmental Entity, if required under Section 4.1(c). Although Acceptable Title must be conveyed, if applicable, acceptance by the City or other Governmental Entity is not required as a condition of signing a Payment Request.

(b) Subject to Section 4.4(d), the City may withhold delivery of the counter-signed Payment Request for the 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; and (ii) general lien releases for the Acquisition Facility (conditioned solely upon payment from EIFD Funding Sources to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works.

(c) 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 for any losses sustained by 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.

(d) The City will be entitled to withhold from each payment of Actual Costs a portion for retention as authorized by City policies and procedures that constitute Existing Standards that does not exceed the amount withheld as a retention in the Developer's contract with its applicable contractor(s), but in any case not less than 5% (or such lower amount pursuant to State law) or in excess of ten percent (10%) of the amount of the Actual Cost of an Acquisition Facility or Component. The amount of any retained amounts withheld pursuant to the preceding sentence shall be released from retention and available to be paid to the Developer from EIFD Funding Sources following the issuance of a Notice of Completion for such Acquisition Facility or Component and the earlier to occur of (i) the satisfaction of any conditions in the Notice of Completion and (ii) the date upon which the Director of Public Works authorizes the release after concluding that any remaining conditions in the Notice of Completion are non-material. The City's authority to withhold a portion of the Actual Costs shall not apply to Privately-Owned Facilities, Fees and Exactions or the 3333 California Street Affordable Housing In-Lieu Fees.

ARTICLE 5

INSPECTION AND PAYMENT REQUESTS FOR PRIVATELY-OWNED FACILITIES AND COMPONENTS

5.1 Inspection; Authorized Payments. This Article 5 applies only to Privately-Owned Facilities and Components thereof for which Developer seeks reimbursement under this Agreement. For Privately-Owned Facilities and Components, the Director of Public Works, or the Department of Building Inspection, as applicable, will make a reasonable effort to arrange for the inspection to commence within five (5) business days following receipt of Developer's written request to inspect Privately-Owned Facilities or Components that Developer believes in good faith are Ready for Payment (the "**Private Inspection Request**"). Within the five (5) business days time period discussed above, the applicable agency will make a reasonable effort to schedule the inspection to occur within fourteen (14) calendar days but in any event not to exceed twenty-one (21) calendar days from the date of receipt of the Private Inspection Request. Within five (5) business days following the completion of the inspection, the Director of Public Works, or the Department of Building Inspection, as applicable, shall notify Developer and the EIFD of the results of the inspection by providing a Private Completion Confirmation or by providing a punch list of items to be corrected.

5.2 Component Financing.

(a) This Section 5.2 shall only apply to Privately-Owned Facilities that are not affordable housing. The EIFD and the City will finance the Actual Costs of the Walnut Affordable Housing Building at one time in accordance with Section 5.3 and will not finance it by Component financing. The EIFD and the City will finance the Gap Fees at one time in accordance with Section 6.4 at the same time that they finance the Actual Costs of the Walnut Affordable Housing Building.

(b) If the estimated cost of a Privately-Owned Facility exceeds one million dollars (\$1,000,000), this Agreement authorizes the payment of the Actual Cost of Components of that Privately-Owned Facility whether or not the Components are capable of serviceable use. Subject to the availability of EIFD Funding Sources, the EIFD agrees to pay to Developer the Actual Costs of such Components under this Section 5.2(a) before: (i) completion of the Privately-Owned Facility of which the Component is a part (unless it is the final Component of a Privately-Owned Facility); or (ii) the transfer to the owner of title to the Privately-Owned Facility and the property underlying the Component. A reasonably detailed description and estimated Actual Cost of each Component to be financed under this Section 5.2(a) must be listed on Exhibit B (either originally or through an approved Supplement). As used in this Agreement, the term Component means:

(i) segments of Privately-Owned Facilities; or

(ii) incremental completion of a Privately-Owned Facility or Component (i.e., progress payments).

(c) Soft costs may be paid as part of the Actual Cost of any Component. In addition, soft costs for more than one Privately-Owned Facility may be submitted for approval

as they occur in advance of construction of such Privately-Owned Facility provided that the soft costs apply to a Privately-Owned Facility or Component listed in Exhibit A or Exhibit B.

(d) The City and EIFD acknowledge that a Component does not have to be accepted by the owner as a condition precedent to the payment of the Actual Costs of the Component.

5.3 Processing Payment Requests for Privately-Owned Facilities and Components.

(a) To initiate the process for payment for a Privately-Owned Facility or Component thereof, Developer must deliver to the Director of Public Works a Payment Request in the form of Exhibit D that contains all relevant information, including the Identified Funding Sources, together with all required attachments and exhibits, all in an organized manner. Required attachments to each Payment Request include:

(i) a copy of the Private Completion Confirmation; and

(ii) Proof of Payment evidencing the Actual Costs were previously incurred and, if applicable, paid for the Privately-Owned Facility.

(b) In addition to those items listed in Section 5.3(a) above, any Payment Request for a Component must be supported by the following documentation:

(i) a completed copy of Exhibit D-1 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) In addition to those items listed in Section 5.3(a) above, a Payment Request for a Completed Privately-Owned Facility or the final Component will be complete only after Developer has submitted all of the following documents, to the extent applicable:

(i) a copy of the Private Completion Confirmation or, if applicable, similar evidence that the Governmental Entity has found the Privately-Owned Facility to be Complete;

(ii) with regard to Privately-Owned Public Open Spaces, a Declaration of Public Open Space Covenants and Restrictions recorded in accordance with the

Public Improvement Agreement and, for the 3333 California Street Project only, Exhibit D to the Second Amendment to Development Agreement;

(iii) with regard to the Walnut Affordable Housing Building, (A) a Notice of Special Restrictions (Affordable Housing) recorded in accordance with the Development Agreement and (B) if the Notice of Special Restrictions (Affordable Housing) does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law;

(iv) with regard to the Walnut Affordable Housing Building, the project completion audit or cost certification required by Section 4.2(d), evidencing all Actual Costs incurred and Third Party Reimbursements received; and

(v) signed and acknowledged lien releases and waivers (in the required statutory forms) from all contractors, subcontractors, materialmen, consultants, and other persons that Developer retained in connection with the Privately-Owned Facility or Component thereof, in each instance unconditionally or conditionally waiving all lien and stop notice rights with respect to the pending payment.

(d) Cost Allocation. Developer will provide its Developer Allocation that is included in the calculation of the Actual Cost in Exhibit D-2 to each Payment Request under this Article 5, showing how Developer has allocated the following costs paid or incurred by Developer (as applicable):

(i) costs that apply to more than one Privately-Owned Facility or Component (e.g., soft costs), as allocated between the Privately-Owned Facilities or Components;

(ii) costs that apply to both Privately-Owned Facilities or Components and other improvements (e.g., grading or in a residential building containing both market rate and inclusionary units, the cost of building-wide systems and common areas), as allocated between the Privately-Owned Facilities or Components and the other improvements; and

(iii) amounts paid to the City that apply to more than one Privately-Owned Facility or Component or both Privately-Owned Facilities or Components and other improvements (e.g., inspection fees, plan review fees, etc.), as allocated between the Privately-Owned Facilities or Components and, if applicable, the other improvements.

(e) Review Process. The process for review of the Payment Requests for Privately-Owned Facilities and Components is subject to Article 6.

5.4 Payment.

(a) Processing of Payment Requests. Payment Requests for Privately-Owned Facilities or Components shall be processed pursuant to Sections 4.2 and 4.3 above.

5.5 Eligibility of Affordable Housing for Financing.

(a) Applicability. The following additional provisions shall apply to the financing of the Walnut Affordable Housing Building. In the event of any conflict between this Section 5.5 and the other provisions of this Article 5, this Section 5.5 shall govern.

(b) Housing Plan. The 3333 California Street Developer shall provide affordable housing in accordance with the Housing Plan, subject to such other requirements described in this Section 5.5. In the event of any conflict between this Section 5.5 and the Housing Plan, this Section 5.5 shall govern solely to the minimum extent required to comply with the EIFD Law.

(c) Permitted Uses of EIFD Financing for Affordable Housing.

(i) The 3333 California Street Developer may use proceeds of EIFD Bonds and Allocated Tax Revenue to finance the Actual Costs (including related planning and design work) of purchasing, constructing, expanding, improving, seismic retrofitting or rehabilitating affordable housing units in the Walnut Affordable Housing Building. The EIFD shall require, by recorded covenants or restrictions, that housing units built with financial assistance from the EIFD shall remain available at affordable housing costs to, and occupied by, persons and families of very low, low, or moderate income (as defined in California Health and Safety Code Sections 50105 and 50093) for the longest feasible time (including the period of time specified in the Housing Plan), but for not less than 55 years for rental units and 45 years for owner-occupied units.

(ii) The 3333 California Street Developer may use proceeds of EIFD Bonds and Allocated Tax Revenue to finance the Actual Costs (including related planning and design work) of purchasing, constructing, expanding, improving, seismic retrofitting or rehabilitating facilities for child care, after school care, and social services located on the 3333 California Street Project Site.

(iii) The 3700 California Street Developer may use proceeds of EIFD Bonds and Allocated Tax Revenue to finance the 3700 California Street Affordable Housing In-Lieu Fee used to construct housing units, on-site or off-site, in accordance with the IFP and the EIFD Law. The EIFD shall require, by recorded covenants or restrictions, that housing units built with financial assistance from the EIFD shall remain available at affordable housing costs to, and occupied by, persons and families of very low, low, or moderate income (as defined in California Health and Safety Code Sections 50105 and 50093) for the longest feasible time (including the period of time specified in the Housing Plan), but for not less than 55 years for rental units and 45 years for owner-occupied units and (B) any child care, after school care, and social services financed by the 3700 California Street Affordable Housing In-Lieu Fee shall be integrally linked to tenants of the units described in the preceding clause (A). The Developer acknowledges that any EIFD Bonds issued to finance 3700 California Street Affordable Housing In-Lieu Fee

may be issued as federally taxable EIFD Bonds. The 3700 California Street Developer will not build any Affordable Housing Units.

(d) The 3333 California Street Developer agrees that, solely to the extent required by the EIFD Law and the Housing Plan, (i) the Walnut Affordable Housing Building financed by the EIFD will be subject to the lottery system established by MOHCD under Section 415, (ii) MOHCD will monitor and enforce the requirements applicable to the Walnut Affordable Housing Building financed by the EIFD under this Agreement in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under the Housing Plan, and (iii) to the extent there are implementation issues that have not been addressed, defined, or are otherwise regulated by this Agreement or the Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues. For avoidance of confusion, nothing in this Agreement shall permit MOHCD or the City to restrict the Walnut Affordable Housing Building to be affordable to households earning less than the maximum AMI percentage for households earning very low, low, or moderate income (as defined in California Health and Safety Code Sections 50105 and 50093) or less than the maximum AMI levels permitted in the Housing Plan, unless such restriction is required by the EIFD Law and the 3333 California Street Developer elects at its sole discretion to use the proceeds of the EIFD Bonds and Allocated Tax Revenue to finance the Walnut Affordable Housing Building. Neither the City nor MOHCD shall have the right to require 3333 California Street Developer to sell or rent units at the Walnut Affordable Housing Building at price or rent that is lower than required by the Housing Plan. The rights of the City and the EIFD set forth in this subsection shall be included in a Notice of Special Restrictions (Affordable Housing) recorded in accordance with the Development Agreement and, if the Notice of Special Restrictions (Affordable Housing) does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law.

(e) The financing of the Actual Cost of the Walnut Affordable Housing Building is subject to Section 5.2(a).

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, pursuant to Section 4.2 and Section 5.4.

(b) Each Payment Request will identify all the Identified Funding Sources that are eligible to be used to pay it.

(c) The EIFD will satisfy a Payment Request only from the Identified Funding Sources.

(d) The City shall not deliver to the EIFD a counter-signed Payment Request while the Developer that provides the Payment Request is delinquent in the payment of any ad valorem taxes, special taxes, or property tax assessments levied on any parcel it then owns

or, for the 3333 California Street Project only, while the 3333 California Street Developer is in Default (under and as defined in the Development Agreement).

(e) The City, the EIFD, and each Developer acknowledge that EIFD Funding Sources may be applied to the payment of a Payment Request only to the extent that the costs of the Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) 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.

6.2 Partial Payments; Vested Payment Requests. If Identified Funding Sources are not sufficient to pay all or any part of a Payment Request, then the EIFD will pay the Payment Request to the extent of available Identified Funding Sources and notify Developer of the amount of the remaining portion, which may be the entirety of the Payment Request if there were no Identified Funding Sources available at the time of submission of the Payment Request (herein, the “**Unpaid Portion**”). The right to the payment of the Unpaid 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 EIFD 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 of the number of the Payment Request. 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 Development Agreement; and (c) for the 3333 California Street Project only, whether the Development Agreement has been assigned to or assumed by another person. Subject to Section 6.6, this Section 6.2 will survive termination of this Agreement and the Development Agreement.

6.3 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 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 Director of Public Works must be sent by certified first class mail - return receipt requested, personal delivery, receipted overnight delivery or email. Payment Requests must be clearly marked: “Payment Request No. _____; 3333/3700 California Street; Attn: _____.” Delivery of a Supplement or Payment Request to the Director of Public Works 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) In connection with processing any request under this Agreement (including Payment Requests and Supplements), the City agrees that any additional information request by 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 Director of Public Works will use its 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 Director of Public Works and its 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.

6.4 Deposits.

(a) This section applies to Actual Costs that consist of EIFD Eligible Fees that will be used to finance EIFD Improvements, including affordable housing, on-site or off-site, as described in Section 5.5. If the EIFD Eligible Fees are paid by the EIFD Funding Sources prior to the time such fees are otherwise due and payable, then the Developer that paid the EIFD Eligible Fees shall be provided with a corresponding credit against its obligation to pay such EIFD Eligible Fees. The Developer and the City understand that on the date of proposed application of EIFD Funding Sources for Impact Fees and Exactions the City must make three determinations: (i) whether the Impact Fees and Exactions are EIFD Eligible Fees; (ii) if the Impact Fees and Exactions are EIFD Eligible Fees, whether the City department receiving the EIFD Eligible Fees has spent, or will commit to spend, the EIFD Funding Sources on Actual Costs of EIFD Improvements and affordable housing as described in Section 5.5 in accordance with the IFP and the EIFD Law, and to maintain records demonstrating such expenditures (the “Eligibility Test”); and (iii) if the Impact Fees and Exactions are EIFD Eligible Fees and have satisfied the Eligibility Test, whether those Impact Fees and Exactions may be financed on a tax-exempt or taxable basis under the Internal Revenue Code and its applicable regulations (the “Tax-Exempt Test”). In determining whether the EIFD Eligible Fees will satisfy the Eligibility Test, the City shall use commercially reasonable efforts to work with the City department receiving the EIFD Eligible Fees to allocate the EIFD Funding Sources to Actual Costs of EIFD Improvements and affordable housing as described in Section 5.5 and to maintain the necessary expenditure records so as to satisfy the Eligibility Test. In connection with the Tax-Exemption Test, the City shall use commercially reasonable efforts to finance the EIFD Eligible Fees that have met the Eligibility Test on a tax-exempt basis, but if it is determined that all or any portion of the EIFD Eligible Fees that have met the Eligibility Test cannot be financed on a tax-exempt basis, the City will utilize a combination of tax-exempt bonds, taxable bonds, and direct pay of Allocated Tax Revenues to finance such EIFD Eligible Fees. All references in this Agreement to the financing of Impact Fees and Exactions shall be deemed to be a reference to EIFD Eligible Fees that are eligible to be financed under this Section 6.4(a).

(b) The Developer may be required to pay such EIFD Eligible Fees prior to the availability of the EIFD Funding Sources to pay such EIFD Eligible Fees. In the event such

EIFD Eligible Fees are paid prior to the availability of such EIFD Funding Sources, the amounts paid to the City shall be deemed to be deposits (each a “**Deposit**”) that are subject to refund by the City to the Developer that paid the EIFD Eligible Fees in the manner provided in this Section. Any Deposits made to the City shall be deposited in a separate capital facilities account(s) and may be expended by the City in the ordinary course of business. If the City expends any of the Deposits in the ordinary course of business, the City will be deemed to replenish the expended Deposits from the EIFD Funding Sources if and when received (herein, “**Replenishment**”). The 3333 California Street Developer and the 3700 California Street Developer acknowledge that the City may finance EIFD Eligible Fees with proceeds of tax-exempt bonds only if the City can meet certain requirements of federal tax law, as determined by the City and the EIFD in consultation with their bond counsel. Nothing in this Agreement shall prohibit the issuance of taxable EIFD Bonds necessary to finance those fees that are ineligible to be financed on a tax-exempt basis.

(c) If the Developer has made any Deposits, then following (i) deposit of EIFD Funding Sources with the City for the corresponding EIFD Eligible Fees where the Developer’s Deposit has not been expended by the City or (ii) Replenishment after the Developer’s Deposit has been expended by the City, the City shall return to the Developer that paid the EIFD Eligible Fees from the capital account in which the Deposits were deposited an amount equal to the Deposits (including any amounts available as a result of a Replenishment), without interest or other earnings thereon. The City shall be so obligated to return an amount equal to such Deposits to the Developer that paid the EIFD Eligible Fees only to the extent that an amount equivalent to the amount of the Deposits is deposited with the City from the EIFD Funding Sources. An amount equal to such Deposits may be returned to the Developer that paid the EIFD Eligible Fees from time to time as additional EIFD Funding Sources become available.

(d) EIFD Funding Sources used to pay EIFD Eligible Fees shall be allocated first for return of all Deposits (after Replenishment, if any) prior to being allocated to the payment of EIFD Eligible Fees not previously deposited. For example, if the Developer has paid \$10,000 in Deposits, and EIFD Funding Sources become available in the amount of \$15,000, the City shall apply the first \$10,000 of the EIFD Funding Sources to the payment of the EIFD Eligible Fees that were paid by the Deposits (and, thereafter, return the Deposits to the Developer that paid the EIFD Eligible Fees) and use the remaining \$5,000 of the EIFD Funding Sources to the payment of EIFD Eligible Fees not previously paid by the Deposits, and, in the case of the \$5,000 payment, the City shall provide a credit against the EIFD Eligible Fees, as described in subsection (a) above.

(e) Any Deposits that have not been returned to the Developer that paid the EIFD Eligible Fees at the time it is determined that there will be no further EIFD Funding Sources or CFD Funding Sources available (now or in the future) shall be retained by the City and may be used (to the extent it has not already been so used) for the purposes for which the EIFD Eligible Fees were required, and the unrefunded Deposits shall constitute full and final payment for such EIFD Eligible Fees without any increase of any kind.

(f) The Developer may pay EIFD Eligible Fees prior to the availability of EIFD Funding Sources to pay such EIFD Eligible Fees. Any EIFD Eligible Fees paid (as Deposits) by the Developer shall be made with the understanding that such Deposits (after Replenishment, if any) will be returned from the EIFD Funding Sources if, and when, such EIFD Funding Sources become available. The payment of Deposits prior to the availability of the EIFD

Funding Sources shall not be construed as a dedication or gift of the EIFD Eligible Fees, or a waiver of the return of the Deposits, it being the intention that the EIFD Eligible Fees be financed by the EIFD Funding Sources as set forth herein.

(g) The provisions of this Section 6.4 are subject to Section 5.2(a) with respect to the Gap Fees.

6.5 Waiver by 3700 California Street Developer. The 3700 California Street Developer shall not be entitled to receive payment or reimbursement under this Agreement unless the 3700 California Street Developer has executed and the City has caused to be recorded in the real property records a waiver that is substantively similar to the waiver of the 3333 California Street Developer set forth in Section 3.6 of the Financing Plan. Should the City determine, based upon the advice of bond counsel, that the provisions of the 3700 California Street Developer's waiver could cause the interest on an issue of EIFD Bonds to be subject to federal income taxation, the City, the 3700 California Street Developer and the 3333 California Street Developer shall meet and confer to discuss bond counsel's advice and thereafter, the City may either, in its discretion (i) ask the Public Financing Authority to issue such proposed EIFD Bonds as federally taxable bonds or (ii) (A) release the 3700 California Street Developer from its obligations under such waiver, and the waiver will be deemed to have been discharged and (B) ask the Public Financing Authority to structure any proposed EIFD Bonds in accordance with Section 3.4(c) of the Financing Plan after taking into account the release of the 3700 California Street Developer's obligations under such waiver.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Developer. Each of the 3333 California Street Developer and the 3700 California Street Developer represents and warrants, individually as to itself and not as to the other, to and for the benefit of the City and the EIFD that:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified to transact business and is in good standing in 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 each Developer and the EIFD 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 Covenants of the City.

(a) Allocation. The City covenants to allocate the Allocated Tax Revenue and the Conditional Tax Revenue in accordance with the IFP.

(b) No IFP Amendment without Developer Approval. The City will not approve any amendments to the IFP that would alter the following prioritization of use of the Allocated Tax Revenue without both the 3333 California Street Developer's and the 3700 California Street Developer's prior written approval:

(i) first, to pay EIFD administrative costs;

(ii) second, to pay debt service on EIFD Bonds and to replenish any reserve funds associated with EIFD Bonds;

(iii) third, to repay the City for any Conditional Tax Revenue actually used to pay debt service on EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds in an amount equal to the Conditional Tax Revenue actually used to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds plus interest through the date of repayment at an annual interest rate equal to the rate of interest on the United States Treasury bond with a 10-year maturity on the date of the first use of Conditional Tax Revenue plus 300 basis points, and such interest rate shall remain fixed for the remainder of the term of the IFP; and

(iv) fourth, to accumulate over time and, from time to time at the a Developer's request, to pay directly or reimburse such Developer for the Qualified EIFD Improvements as set forth in this Agreement.

(c) No Bond Parameter Amendments without All Developer Approval. The City will not approve any amendments of the IFP that would alter the following principles related to the issuance of EIFD Bonds: (i) the EIFD will issue EIFD Bonds in compliance with the EIFD Law and the IFP to finance the Qualified EIFD Improvements, (ii) the EIFD Bonds will not be issued except upon the written request of the 3333 California Street Developer and with the prior recommendation of the Controller and approval of the Board of Supervisors, and (iii) other than paying EIFD administrative costs, and costs of issuance and funding capitalized interest and debt service reserve funds, the proceeds of the EIFD Bonds shall be used to finance Qualified EIFD Improvements in the amounts requested by a Developer and approved by the City.

7.4 Covenants of the Developer. The 3333 California Street Developer and the 3700 California Street Developer each separately covenant as follows

(a) Filing of Annual Reports. In connection with the EIFD's preparation and filing of the annual report required by California Government Code Section

53398.66(j), the Developer shall provide such information and provide such assistance on a timely basis as may be reasonably requested by the EIFD.

(b) Preparation of Audits. In connection with the EIFD's preparation and filing of the audits required by California Government Code Sections 53398.66(j) and 53398.88, the Developer shall provide such information and provide such assistance on a timely basis as may be reasonably requested by the EIFD.

7.5 Representations and Warranties of the EIFD. The EIFD represents and warrants to and for the benefit of the 3333 California Street Developer, the 3700 California Street Developer, and the City that:

(a) The EIFD is a duly formed enhanced infrastructure financing district formed under the EIFD Law, is in compliance with the EIFD Law, and has the power and authority to carry on its business as now being conducted.

(b) The EIFD 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 EIFD.

7.6 Covenants of the EIFD. The EIFD makes the following covenants to the City, the 3333 California Street Developer, and the 3700 California Street Developer:

(a) Commencement Date for each Project Area. With respect to each Project Area, the EIFD shall not take any action to interfere with the allocation of Allocated Tax Revenue from property in such Project Area in accordance with the IFP.

(b) Application of EIFD Funding Sources. The EIFD shall apply the EIFD Funding Sources in accordance with the IFP and this Agreement.

(c) Filing of Annual Reports. The EIFD shall timely file the annual report required by California Government Code Section 53398.66(j). The EIFD acknowledges that the failure to timely file the annual report (i) could result in the inability to spend any Allocated Tax Revenue until the report is filed and (ii) shall constitute an Event of Default by the EIFD under this Agreement.

(d) Preparation of Audits. The EIFD shall timely provide the audit required by California Government Code Section 53398.88. The EIFD acknowledges that the failure to timely prepare the audit shall constitute an Event of Default under this Agreement.

(e) No IFP Amendment without 3333 California Street Developer Approval. The EIFD will not approve any amendments to the IFP that would alter the following prioritization of use of the Allocated Tax Revenue without the prior written approval of the 3333 California Street Developer:

(i) first, to pay EIFD administrative costs;

- (ii) second, to pay debt service on EIFD Bonds and to replenish any reserve funds associated with EIFD Bonds;
- (iii) third, to repay the City for any Conditional Tax Revenue actually used to pay debt service on EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds in an amount equal to the Conditional Tax Revenue actually used to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds plus interest through the date of repayment at an annual interest rate equal to the rate of interest on the United States Treasury bond with a 10-year maturity on the date of the first use of Conditional Tax Revenue plus 300 basis points, and such interest rate shall remain fixed for the remainder of the term of the IFP; and
- (iv) fourth, to accumulate over time and, from time to time at the a Developer's request, to pay directly or reimburse such Developer for the Qualified EIFD Improvements as set forth in this Agreement.

7.7 Events of Defaults; Remedies. In the event that the EIFD or the City defaults under its respective obligations under this Agreement or the IFP, the 3333 California Street Developer, the 3700 California Street Developer, or the City (in the case of an EIFD default) may provide a written notice of default to the EIFD or the City, as applicable (the "**Default Notice**"). The Default Notice shall specify the nature of the default, and shall determine whether the default has to do with the processing and delivering of Payment Requests, the application of Allocated Tax Revenue, Conditional Tax Revenue, or proceeds of EIFD Bonds, or the filing of the annual reports and audits required by the EIFD Law (herein, a "**Monetary Default**") or any other default under this Agreement or the IFP (herein, a "**Non-Monetary Default**"). The EIFD or the City, as the case may be, shall have three (3) business days to cure a Monetary Default and fifteen (15) business days to cure a Non-Monetary Default, in each case following receipt of the applicable Default Notice therefor. The failure to timely cure the default provided in the Default Notice shall be considered an "**Event of Default**." If an Event of Default occurs, the City, the 3333 California Street Developer, or the 3700 California Street Developer, may exercise all legal and equitable remedies available, including but not limited to filing proceedings to obtain injunctive relief or compel specific performance of the IFP and this Agreement; provided, however, that the City shall not be liable for monetary damages as a result of the exercise of remedies by the Developer except for the payment of reasonable attorneys' fees and costs pursuant to Section 8.3. The EIFD and the City hereby acknowledge and agree that a failure of the EIFD or the City to timely perform any duty, obligation or covenant under the IFP or this Agreement, including the allocation and application of Allocated Tax Revenue and Conditional Tax Revenue in accordance with the IFP and this Agreement, will cause irreparable harm to each Developer that cannot be fully compensated by monetary damages, and shall entitle each Developer to seek injunctive relief or specific performance. In addition, the City shall also be entitled to all legal and equitable remedies, including, but not limited to, injunctive relief to compel the EIFD to perform its duties, obligations, or covenants under the IFP and this Agreement.

(a) Waiver of Government Claims Act Procedures. Due to the unique nature of the IFP and the Project and because time is of the essence in the performance of obligations under the IFP and this Agreement, the City and the EIFD hereby each waive the procedural protections of the Government Claims Act, Cal. Gov't Code Section 810 et seq, in

connection with any dispute related to or arising out of the IFP or this Agreement, including those procedures requiring the filing of an administrative claim within the applicable statute of limitation.

(b) Rights and Remedies Cumulative. The rights and remedies of the 3333 California Street Developer, the 3700 California Street Developer, and the City regarding the enforcement of the IFP and this Agreement shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this Agreement for the same breach by the applicable Party. The City and the Developer may pursue remedies simultaneously on the same matter. In addition, the remedies provided in this Agreement regarding the enforcement of the IFP and this Agreement do not limit the remedies provided in other Project agreements among the City and the EIFD.

ARTICLE 8 MISCELLANEOUS

8.1 Limited Liability of the City and EIFD. Except as otherwise provided in the Development Agreement (for the 3333 California Street Project only), each Developer agrees that any and all obligations of the City and EIFD arising out of or related to this Agreement are special and limited obligations of the City and EIFD, and the EIFD's obligations to make any payments under this Agreement to implement the Financing Plan are restricted entirely to available EIFD Funding Sources and Conditional Tax Revenue as provided in the IFP and the Financing Plan and from no other source. No member of the Board of Supervisors, the Public Financing Authority, or City 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 EIFD (or of its successors or assigns) will be personally liable to either Developer, nor will any officers, directors, shareholders, agents, or employees of a Developer (or of its successors or assigns) be personally liable to the City or EIFD in the event of any default or breach of this Agreement by the City or EIFD or for any amount that may become due to a Developer, the EIFD, or the City, as the case may be, under this Agreement or for any obligations of the Parties under this Agreement.

8.2 Timelines. Time is of the essence with respect to each provision of this Agreement in which time is a factor. The City will use good faith efforts to comply with all timelines applicable to City responses set forth in this Agreement, but failure by the City to comply with such timelines shall not result in deemed approval of the related request or a default by the City under this Agreement. In the event the City fails to exercise good faith in complying with the timelines or repeatedly fails to meet the timelines in this Agreement, either Developer may add such failures as an agenda item for a meeting of the Review Panel.

8.3 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 8.3 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.

8.4 Notices. Except as provided in Sections 6.3(a) and (b), for the City and the 3333 California Street Developer, any notices to be provided under this Agreement must be delivered to the addresses and in the manner set forth in the Development Agreement. For the 3700 California Street Developer, any notices to be provided under this Agreement must be delivered to the following address: 150 Post Street, Suite 320, San Francisco, California 94108.

8.5 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement may not be assigned by the EIFD or the City. This Agreement may be assigned by the 3333 California Street Developer to Permitted 3333 Assigns only. This Agreement may be assigned by the 3700 California Street Developer to Permitted 3700 Assigns only. The sale of property and the entering into a DA Assignment and Assumption Agreement by a Transferee does not give the Transferee any rights under this Agreement. A Transferee will have no rights under this Agreement unless the 3333 California Street Developer has specifically assigned this Agreement in whole or in part in a separate written EIFD Assignment and then only to the extent set forth in the EIFD Assignment.

8.6 Other Agreements. The obligations of the 3333 California Street Developer and the 3700 California Street 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 the rights of each of the Developers, or duties to perform their respective obligations under the Development Agreement (for the 3333 California Street Project only), the Conditions of Approval (for the 3700 California Street Project only) and any Existing Standards. If this Agreement creates ambiguity in relation to or conflicts with any provision of the Financing Plan or the IFP, then the Financing Plan or IFP, as the case may be, will prevail.

8.7 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, or the failure by a Party to exercise its rights upon the default of another Party, will not constitute a waiver of such Party's right to later insist upon and demand strict compliance by another Party with the terms of this Agreement.

8.8 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 EIFD, 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, the EIFD, or

Developer will be for the sole and exclusive benefit of the City, the EIFD, and each Developer, subject to Section 8.5.

8.9 Amendment. This Agreement may be amended from time to time by the written agreement of the City, the EIFD, the 3333 California Street Developer, and the 3700 California Street Developer. A Supplement may be approved under Section 1.4. The Parties agree that changes to the forms of the Payment Requests as needed to make adjustments to clarify and expedite the payment process under this Agreement are ministerial in nature and do not require an amendment to this Agreement.

8.10 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.

8.11 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.

8.12 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. For purposes of this Agreement, the term “business day” means a day other than a Saturday, Sunday, or a federal holiday. A business day begins at 8 a.m. and ends at 5 p.m., Pacific Standard Time or Pacific Daylight Savings Time, whichever is in effect on the date in question.

ARTICLE 9 DEFINITIONS

9.1 Definitions. If a term that is used in this Agreement with respect to the 3700 California Street Project is defined in the Development Agreement or the Financing Plan, it shall have the meaning given such term in the Development Agreement or Financing Plan even though the 3700 California Street Project is not subject to the Development Agreement or Financing Plan.

“Acceptable Title” means, with respect to Acquisition Facilities only constructed on land that is not owned by the City or other Governmental Entity, 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) for the 3333 California Street Project only, those required to satisfy the terms of the Development Agreement; 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 the City or any Governmental Entity, is exempt from the special tax to be levied by the CFD.

“Acquisition Facilities” means the facilities described in Exhibit A and Exhibit B to be acquired by the City or other Governmental Entity.

“Acquisition Facility Completion Confirmation” means, as the context requires, an Acquisition Facility Determination of Completion or an Acquisition Facility Determination of Component Completion issued by the Director of Public Works or the San Francisco Department of Building Inspection with respect to an Acquisition Facility or Component, respectively.

“Acquisition Facility Determination of Completion” means, for a completed Acquisition Facility, a written notice from the Director of Public Works that the Acquisition Facility has been approved as inspected. Pursuant to the MOU, the Department of Public Works will provide construction inspection services for all Acquisition Facilities constructed on or after the date of the MOU. For all Acquisition Facilities inspected or to be inspected by the Department of Public Works or the San Francisco Department of Building Inspection, the Acquisition Facility Determination of Completion shall be the form customarily provided by the Director of Public Works or the San Francisco Department of Building Inspection to evidence the completion and approval of the inspection of a facility. An Acquisition Facility Determination Completion does not constitute a Notice of Completion under the Public Improvement Agreement.

“Acquisition Facility Determination of Component Completion” means a written notice of the Director of Public Works that a Component has been approved as inspected. For a Component being financed in progress payments, the written notice shall evidence that the work represented by the progress payment requested has been performed. The form of the written notice shall be the form (e.g., a job card) customarily provided by the Director of Public Works to evidence the approval of the inspection of work in place. An Acquisition Facility Determination of Component Completion does not constitute a Notice of Completion under the Public Improvement Agreement.

“Actual Cost” means the out-of-pocket Qualified costs actually incurred by Developer in connection with construction of an Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) (which includes any applicable Developer Allocation, or Agreed-Upon Allocation), including, without limitation or duplication:

(i) costs incurred by the Developer to acquire from unrelated Third Parties, hold through completion of the EIFD Improvements, and as relates to Acquisition Facilities, convey Acceptable Title to the City or any other Governmental Entity, any real property, rights-of-way, or other interests in real property (including, without limitation, temporary or permanent leases, easements, rights of entry, or encroachments) required to construct the EIFD Improvements, together with any transaction costs associated with the acquisition and/or conveyance, such as transfer taxes, title insurance, and recording fees;

(ii) “hard costs,” including without limitation:

(1) construction labor and materials;

(2) tenant improvements and/or tenant improvement allowances provided by Developer for Privately-Owned Facilities;

(3) preserving and modifying existing historical structures on the Project Site, including, without limitation, deconstruction, selective demolition, stabilization, seismic retrofit, and hazardous materials abatement activities; and any other costs incurred as it relates to historic preservation plans and protective measures;

(4) utility demolition and relocations;

(5) geotechnical measures to prepare the Project Site for construction of the EIFD Improvements, including, without limitation, excavation, soil harvesting for fill and surcharge, import and export of materials/soil for fill and surcharge, clearing and grubbing, slope stabilization, deep soil mixing and other ground improvement methods, installation of geogrid, surcharging, wick drains, rock fragmentation, placement of fill, compaction, mass and finish grading, and post-construction stabilization such as hydroseeding;

(6) site preparation and management costs including, without limitation, contractor mobilization; potholing; construction staking; demolition; excavation; shoring; supportive structures below or beyond the EIFD Improvements (if required to construct EIFD Improvements except with respect to demolition costs); dewatering; erosion, dust, vibration, stormwater, groundwater, archaeological, paleontological, biological, traffic and air quality monitoring and control measures, hazardous materials/soil abatement, and unforeseen conditions as required during construction of the EIFD Improvements pursuant to the Approvals and Non-City Approvals (with respect to the 3333 California Street Project) and the Conditions of Approval (with respect to the 3700 California Street Project); temporary improvements, equipment, fencing, job site trailers, parking, signage, labor, lighting, utilities. For the avoidance of doubt, because demolition, in whole or in part, of the existing structurally non-code conforming improvements is a prerequisite to the

construction and delivery of the new housing Projects, all demolition-related activities and associated costs necessary to prepare the sites for the new Projects shall constitute eligible costs of the EIFD Improvements; and

(7) temporary or permanent improvements on private properties on or adjacent to the Project Site as required to construct the EIFD Improvements, including without limitation, relocating and/or replacing service laterals, boxes, vaults and fire department connections, conforming driveways and pedestrian pathways to new grades, demolition, structural modifications/rehabilitation, and exterior façade work of existing buildings and garages associated with demolition required for the EIFD Improvements, and installing shoring;

(iii) “soft costs” such as architectural, engineering, consultant, accountant, attorney, reprographics, and other professional fees, including, without limitation:

- (1) architects and landscape architects;
- (2) environmental scientists, consultants, and engineers;
- (3) civil, geotechnical, and structural engineering;
- (4) surveying;
- (5) cost estimating and other preconstruction services;
- (6) traffic studies, street geometric and signal design, and transportation demand management;
- (7) mechanical, electrical, and plumbing design;
- (8) acoustical design and engineering;
- (9) lighting design;
- (10) signage and interpretive design;
- (11) waterproofing consultants;
- (12) vertical transportation design;
- (13) fire & life safety systems design;
- (14) joint trench design and utility consultants;
- (15) code consultants;
- (16) sustainability consultants;
- (17) interior design;
- (18) testing and special inspection;
- (19) peer review of any of the foregoing;
- (20) permit expediting; and
- (21) LBE management/consultation; and
- (22) EIFD management/consultation.

(iv) property insurance (including any comprehensive owner-controlled insurance program, general liability, automobile liability, worker’s compensation, personal property, flood, pollution legal liability, comprehensive personal liability, builder’s risk, and professional services insurance);

(v) construction management fees, project management costs, and asset management costs paid to or by Developer (which may include the costs of Developer’s employees), a

Transferee, or their respective affiliates, limited in the aggregate to 15% of Actual Costs that are hard costs;

(vi) EIFD Eligible Fees that will be used to finance affordable housing as described in Section 5.5, utility connection fees and capacity charges incurred in connection with the construction of EIFD Improvements, plan check and inspection fees, and other fees paid by Developer to the City and any other Governmental Entity for obtaining permits, licenses, certificates of occupancy, Completion Confirmation, and all other Approvals and Non-City Approvals needed to develop or construct the EIFD Improvements;

(vii) Compliance with the Approvals, the Non-City Approvals, the Conditions of Approval, and CEQA, as applicable, including without limitation the MMRP (both on- and off-site related to EIFD Improvements);

(viii) City Costs;

(ix) real property and possessory interest taxes;

(x) costs to use financing sources other than the EIFD Funding Sources (such as a loan, surety bond, or letter of credit) that are provided by entities that are not affiliates of the Developer pursuant to an arm's length transaction, such as interest expense, points, lender fees, mortgage recording fees, and loan closing costs;

(xi) security required under the Development Agreement (for the 3333 California Street Project only), Approvals, Non-City Approvals or otherwise related to the construction, acceptance and/or conveyance of the EIFD Improvements, such as guarantees, letters of credit, and payment, performance and/or maintenance bonds, including any amounts paid by the Developer to a surety or bonding company for payments made under such surety or bonds;

(xii) Project Site safety and security measures;

(xiii) Third Party costs to prepare and store audits and reports consistent with the EIFD Law and this Agreement;

(xiv) the demolition, abatement, stabilization and/or rehabilitation of existing structures necessary to enable development of the Projects. For the avoidance of doubt, because demolition, abatement, stabilization and/or rehabilitation of the existing improvements is a prerequisite to the construction and delivery of the Projects, including the creation of housing that funds the affordable housing (in-lieu or constructed) and the EIFD Improvements, all such activities and associated costs shall be considered as a cost of the EIFD Improvements; and

(xv) any other cost specifically identified in this Agreement, the Development Agreement (for the 3333 California Street Project only), or IFP as a Qualified cost.

“Agreed-Upon Allocation” is defined in Section 4.2(a).

“Agreement” is defined in the introductory paragraph.

“Allocated Tax Revenue” is defined in the IFP.

“Approvals” is defined in the Development Agreement.

“Board of Supervisors” is defined in the Development Agreement.

“Building” or **“Buildings”** means each new or rehabilitated building that is constructed by Developer on the Project Site.

“CFD” is defined in the Financing Plan.

“CFD Acquisition and Reimbursement Agreement” means a CFD Acquisition and Reimbursement Agreement (3333 California Street), that may be entered into by and between the City and the 3333 California Street Developer.

“CFD Bonds” is defined in the Financing Plan.

“CFD Funding Sources” is defined in the Financing Plan.

“CFD Remainder Taxes” is defined in the CFD Acquisition and Reimbursement Agreement.

“City” is defined in the Financing Plan.

“City Agency” or **“City Agencies”** is defined in the Development Agreement.

“City Costs” is defined in the Development Agreement.

“Complete” (or its variant **“Completion”** or **“Completed”**) means, as applicable, that: (i) a specified scope of work has been substantially completed in accordance with the City-approved plans and specifications for such scope of work; (ii) with respect to Privately-Owned Facilities, the City Agencies or the Non-City Agencies with jurisdiction over any required permits for such Privately-Owned Facilities have issued all final approvals required for the contemplated use; (iii) with respect to any Acquisition Facilities, the City Engineer determines the Acquisition Facility has been completed to his or her satisfaction, the scope of work is ready for its intended use and the Acquisition Facility has been completed in accordance with the Subdivision Code and any applicable Public Improvement Agreement; and (iv) with respect to any Building, a temporary certificate of occupancy (or its equivalent) has been issued.

“Completion Confirmation” means, as the context requires, either the Acquisition Facility Completion Confirmation or the Private Completion Confirmation.

“Component” means a component or phase or progress payment of an EIFD Improvement or a Privately-Owned Facility shown in Exhibit B, as amended from time to time by an approved Supplement.

“Conditional Tax Revenue” is defined in the IFP.

“Conditions of Approval” means the conditions set forth in the San Francisco Planning Commission Motion No. 2731, adopted on May 1, 2025, related to the 3700 California Street Project (Conditional Use Authorization Application No. 2017-003559CUA-03).

“DA Assignment and Assumption Agreement” means an Assignment and Assumption Agreement, as defined in the Development Agreement.

“Default Notice” is defined in Section 7.7.

“Department of Public Works” is defined in Section 1.3.

“Deposit” is defined in Section 6.4(b).

“Developer” means, as the context requires, either the 3333 California Street Developer or the 3700 California Street Developer.

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

“Development Agreement” means the Development Agreement by and between the City and the 3333 California Street Developer for the 3333 California Street Project, as amended by the Memorandum of Minor Modification of Development Agreement (Amendment No. 1) dated as of June 5, 2024, and recorded in the Official Records on June 26, 2024, as Document No. 2024048267 (**“First Amendment to Development Agreement”**), and the Second Amendment to Development Agreement dated as of April 30, 2025, and recorded in the Official Records on May 7, 2025, as Document No. 2025034503 (**“Second Amendment to Development Agreement”**).

“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.

“Effective Date” is defined in Section 1.1.

“EIFD” is defined in the Financing Plan.

“EIFD Assignment” means a written assignment of all or part of this Agreement by the Developer to a person, who may be a Transferee. An EIFD Assignment must be separate and apart from any DA Assignment and Assumption Agreement.

“EIFD Bonds” means one or more series of bonds issued by the EIFD and secured by the Allocated Tax Revenue and Conditional Tax Revenue.

“EIFD Eligible Fees” means (i) the Gap Fees defined in the Development Agreement, (ii) the Jobs Housing Linkage Fees defined in the Development Agreement, (iii) the AWSS Community Benefit Fee defined in the Development Agreement, (iv) the 3700 California Street Affordable Housing In-Lieu; (v) fees imposed by the City on the Projects after EIFD formation; and (vi) fees imposed by the City on the Projects prior to EIFD formation that are modified by the City after EIFD formation. Nothing in this definition, which limits the Impact Fees and Exactions that may be financed by the EIFD, is intended to limit the eligibility for financing of the Actual

Costs of EIFD Improvements incurred by the Developer in the construction of EIFD Improvements.

“EIFD Funding Sources” is defined in Recital D(1).

“EIFD Improvements” means the Acquisition Facilities and Privately-Owned Facilities described in Exhibit A (as such exhibit may be amended or supplemented from time to time in accordance with this Agreement) and other facilities and improvements eligible to be financed by the EIFD Law and the IFP (whether or not required by the Development Agreement) that are constructed in connection with the Project.

“EIFD Law” is defined in the IFP.

“Event of Default” is defined in Section 7.7.

“Existing Standards” is defined in the Development Agreement.

“Financing Plan” means the Financing Plan attached as Exhibit O to the Second Amendment to Development Agreement.

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

“Gap Fees” is defined in the Housing Plan.

“Governing Acts” means, as applicable, the EIFD Law, or the laws governing the issuance of EIFD Bonds.

“Governmental Entity” is defined in the Financing Plan.

“Housing Plan” is the Affordable Housing Program attached as Exhibit D to the Second Amendment to Development Agreement.

“Identified Funding Sources” means, as applicable (i) EIFD Funding Sources, (ii) CFD Funding Sources, and (iii) both of the foregoing, if the EIFD Improvement is eligible to be financed by both EIFD Funding Sources and CFD Funding Sources.

“IFP” means the Infrastructure Financing Plan for the EIFD required to be prepared and approved under the EIFD Law.

“Impact Fees and Exactions” is defined in the Development Agreement, which includes Gap Fees.

“Indenture” is defined in the Financing Plan.

“Infrastructure” means the infrastructure to be constructed by Developer for the Project.

“Inspection Request” is defined in Section 3.1(c).

“**MOHCD**” is defined in the Development Agreement.

“**Monetary Default**” is defined in Section 7.7.

“**MOU**” means the Memorandum of Understanding between the City and the Developers to be executed by the parties subsequent to the formation of the EIFD.

“**Non-City Agency**” means a Federal, State or local governmental agency that is not a City Agency.

“**Non-City Approvals**” is defined in the Development Agreement.

“**Non-Monetary Default**” is defined in Section 7.7.

“**Notice of Special Restrictions (Affordable Housing)**” means the Notice of Special Restrictions for the Walnut Affordable Housing Building, based on MOHCD’s standard form thereof with such changes as a necessary to reflect the specifics of the Walnut Affordable Housing Building and the Housing Plan, signed by the 3333 California Street Developer and recorded against the Walnut Housing Parcel.

“**Party**” or “**Parties**” means, individually or collectively as the context requires, the 3333 California Street Developer, the 3700 California Street Developer, the EIFD, and/or the City.

“**Payment Request**” means a document to be used by Developer in requesting payment for: (a) the Actual Costs of an Acquisition Facility or Component, substantially in the form of Exhibit C; or (b) the Actual Costs of a Privately-Owned Facility or Component, substantially in the form of Exhibit D.

“**PCOW**” is defined in Section 2.3(c).

“**Permitted 3333 Assigns**” means a Transferee (as defined in the Development Agreement) that (i) has executed a DA Assignment and Assumption Agreement with respect to the Development Agreement or has otherwise assumed the obligations thereunder, including by the express terms of the Development Agreement or by operation of law, and (ii) has executed an EIFD Assignment with respect to some or all of the rights set forth in the Financing Plan. A Transferee that has executed a DA Assignment and Assumption Agreement with respect to the Development Agreement but that was not assigned any rights and obligations under the Financing Plan through an EIFD Assignment shall not be considered a Permitted 3333 Assign of this Agreement notwithstanding that such Transferee shall be considered a “3333 California Street Developer” under the Development Agreement.

“**Permitted 3700 Assigns**” means a transferee of the 3700 California Street Project that has executed an EIFD Assignment with respect to some or all of the rights set forth in the Financing Plan and this Agreement. A transferee that has not been assigned any rights and obligations under this Agreement through an EIFD Assignment shall not be considered a Permitted 3700 Assign of the 3700 California Street Developer under this Agreement notwithstanding that such transferee owns all or part of the 3700 California Street Project.

“Plans” means the construction drawings and specifications that together form the basis of construction for an Acquisition Facility or Component, or a Privately-Owned Facility or Component. **“Private Completion Confirmation”** means, as the context requires, a Private Determination of Completion or a Private Determination of Component Completion issued by the Director of Public Works or the San Francisco Department of Building Inspection, as applicable, under Section 5.1 with respect to Privately-Owned Facility or Component, respectively.

“Private Determination of Completion” means, for a completed Privately-Owned Facility, a written notice from the Director of Public Works or the San Francisco Department of Building Inspection, as applicable, that the Privately-Owned Facility has been approved as inspected. Pursuant to the MOU, the Department of Public Works will provide construction inspection services for most Privately-Owned Facilities commenced on or after the date of the MOU. The Walnut Affordable Housing Building will be inspected by the San Francisco Department of Building Inspection. For all Privately-Owned Facilities inspected or to be inspected by the Department of Public Works, the Private Determination of Completion shall be in a form similar to the forms customarily provided by the Director of Public Works to evidence the completion and approval of the inspection of a facility. For the Walnut Affordable Housing Building, the Private Determination of Completion shall be a temporary certificate of occupancy.

“Private Determination of Component Completion” means a written notice of the Director of Public Works, or the San Francisco Department of Building Inspection, as applicable, that a Component of a Privately-Owned Facility has been approved as inspected. For a Component of a Privately-Owned Facility being financed in progress payments, the written notice shall evidence that the work represented by the progress payment requested has been performed. The form of the written notice shall be the form (e.g., a job card) customarily provided by the Director of Public Works or the San Francisco Department of Building Inspection, as applicable, to evidence the approval of the inspection of work in place.

“Private Inspection Request” is defined in Section 5.1.

“Privately-Owned Facilities” means EIFD Improvements that are not Acquisition Facilities.

“Privately-Owned Public Open Spaces” means for 3333 California Street Developer, the Publicly Accessible Private Improvements as defined in the Development Agreement.

“Project” means the 3333 California Street Project and the 3700 California Street Project.

“Project Area” means one or more project areas of the EIFD.

“Project Site” means either the 3333 California Street Project Site or the 3700 California Street Project Site.

“Proof of Payment” means a cancelled check, a wire or ACH 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 Authority” is defined in the IFP.

“Public Improvement Agreement” means (A) for the 3333 California Street Project, (1) the Declaration of Restrictions and Obligations Pursuant to Major/Street Encroachment Permit, recorded in the Official Records of the City and County of San Francisco on June 25, 2024 as Instrument Number 2024048101, which includes Major/Street Encroachment Permit No. 19ME-00010, as the same may be amended from time to time, (2) Encroachment Permit and Maintenance Agreement, dated for reference as of June 5, 2024, by and between the City and the Developer, recorded in the Official Records of the City and County of San Francisco on June 20, 2024 as Instrument Number 2024046665, as the same may be amended from time to time, and (3) similar permits and agreements for future phases of the 3333 California Street Project and (B) for the 3700 California Street Project, (1) the _____ Public Improvement Agreement dated for reference as of _____, by and between the City and the Developer, recorded in the Official Records of the City and County of San Francisco on _____ as Instrument Number, as the same may be amended from time to time and (2) similar permits and agreements for future phases of the 3700 California Street Project..

“Public Improvements” means the facilities, both on- and off-site, to be improved, constructed and dedicated by Developer and, upon Completion in accordance with this Agreement, accepted by the City. Public Improvements include the streets within the Project Site and all Infrastructure and public utilities within such streets (such as electricity, water and sewer lines but excluding any non-municipal utilities), including sidewalks, landscaping, bicycle lanes, bus boarding island, street furniture, and paths and intersection improvements (such as curbs, medians, signaling, traffic controls devices, signage, and striping). The Public Improvements do not include Privately-Owned Facilities or, if any, privately owned facilities or improvements in the public right of way.

“Qualified” is defined in the Financing Plan.

“Ready for Payment” means that the Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) is ready for its intended use and is completed in substantial conformity with the Development Agreement (for the 3333 California Street Project only), Plans and Existing Standards and procedures, irrespective of the functionality of the larger system of which it is a part. A Ready for Payment determination does not constitute the issuance of a Notice of Completion under the Public Improvement Agreement.

“Replenishment” is defined in Section 6.4(b).

“Review Panel” is defined in Section 1.4(d).

“Section 415” means the City’s Inclusionary Affordable Housing Program as of the Effective Date (Planning Code sections 415 and 415.1 through 415.11).

“Subdivision Code” means the San Francisco Subdivision Code and Subdivision Regulations.

“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 or an Affiliate.

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

“Transferee” is defined in the Development Agreement.

“Transportation Demand Management Plan” means the transportation demand management plan attached as Exhibit J to the Development Agreement.

“Unpaid Portion” is defined in Section 6.2.

“Vested Payment Request” is defined in Section 6.2.

“Walnut Affordable Housing Building” means the 3333 California Street Developer’s stand-alone 100% affordable housing building located on the Walnut Housing Parcel.

“Walnut Housing Parcel” is defined in the Housing Plan.

“Workforce Agreement” means the Workforce Agreement attached as Exhibit I to the Development Agreement.

“3333 California Street Developer” means Laurel Heights Partners, LLC, a Delaware limited liability company, and its successors and assigns.

“3333 California Street Project” means the “Project” defined in the Development Agreement.

“3333 California Street Project Site” means the Project Site defined in the Development Agreement.

“3700 California Street Developer” means California 3700 LLC, a Delaware limited liability company, and its successors and assigns.

“3700 California Street Project” means the “Project” defined in the Conditions of Approval.

“3700 California Street Project Site” means the Project Site defined in the Conditions of Approval.

“3700 California Street Affordable Housing In-Lieu Fees” means the affordable housing in-lieu fees payable in connection with the 3700 California Street Project.

IN WITNESS WHEREOF, the City, the EIFD, the 3333 California Street Developer, and the 3700 California Street Developer have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

CITY:

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

By:

Name:

Title:

Date of Execution: _____, 20__

Approved as to form:

DAVID CHIU,
City Attorney

By:

Name:

Deputy City Attorney

Date of Execution: _____, 20__

SAN FRANCISCO ENHANCED
INFRASTRUCTURE FINANCING DISTRICT
No. 3 (3333/3700 California Street)

By: _____
Authorized Representative

Date of Execution: _____, 20__

DEVELOPER:

LAUREL HEIGHTS PARTNERS, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

Date of Execution: _____, 20__

CALIFORNIA 3700 LLC,
A Delaware limited liability company

By: _____

Name: _____

Its: _____

Date of Execution: _____, 20__

EXHIBIT A

Description of EIFD Improvements to be Financed for the Project

Subject to any limitation in the IFP and this EIFD Acquisition and Financing Agreement, the EIFD shall be authorized to finance all or a portion of the Actual Costs of the purchase, site preparation, construction, expansion, improvement, seismic retrofit, or rehabilitation, of the public capital facilities or other projects (whether publicly- or privately-owned) of communitywide significance that are (i) authorized by the EIFD Law, (ii) for the 3333 California Street Project, required or permitted by the Development Agreement or the Approvals (as defined in the Development Agreement) and (iii) for the 3700 California Street Project, required or permitted by the plan documents or the Conditions of Approval (“**EIFD Improvements**”), including, but not limited to, the Actual Costs of those facilities and projects of communitywide significance described below and those costs described below.

The EIFD Improvements may be owned by a public agency (including, but not limited to, the City) or privately-owned as permitted by the EIFD Law.

EIFD Improvements may be physically located within or outside the boundaries of the EIFD; any EIFD Improvements that are located outside the boundaries of the EIFD must have a tangible connection to the work of the EIFD. Section C of the IFP (“Finding of Communitywide Significance”) includes a finding that any EIFD Improvements financed by the EIFD that are located outside the boundaries of the EIFD, including, but not limited to, any affordable housing, will have a tangible connection to the work of the EIFD.

Capitalized terms used herein but not defined herein have the meanings given them in the main body of this Agreement.

For the avoidance of doubt, whenever this Agreement refers to the EIFD providing financing for fees it means that the EIFD funds in a corresponding amount will be applied to pay the actual costs of eligible EIFD Improvements and the Developers will be provided with a corresponding credit against their obligation to pay such fees, as described herein. Section 6.4 provides more detail about the financing of fees.

The EIFD Improvements for the 3333 California Street Project and the 3700 California Street Project include, but are not limited to, the following:

1. Public improvements constructed or caused to be constructed by the 3333 California Street Developer and/or the 3700 California Street Developer, including, but not limited to, site work, streets, utilities, street trees, landscaping, and Streetscape Improvements (as defined in the Development Agreement) and costs associated with the demolition and/or rehabilitation of existing and historic buildings or components thereof.
2. Privately-owned community improvements constructed or caused to be constructed by the 3333 California Street Developer and/or the 3700 California Street Developer, including, but not limited to, utilities, parks and open space including any interim uses, pedestrian paths, alleys, storm drain facilities, stormwater capture and processing systems, utility facilities serving the EIFD Improvements, Streetscape Improvements (if privately owned),

and other “purple pipe” requirements, SFMTA employee restrooms, Muni bus shelters, community or recreation facilities, tenant improvements, and Publicly Accessible Private Improvements (as defined in the Development Agreement).

3. Affordable Housing. The acquisition, construction, or rehabilitation of the Walnut Affordable Housing Building, including, subject to the provisions of this Agreement (including, but not limited to Section 6.4), any Gap Fees and affordable housing in-lieu fees paid by the Projects to construct housing units in accordance with the IFP and the EIFD Law. The EIFD shall require, by recorded covenants or restrictions, that housing units built with financial assistance from the EIFD shall remain available at affordable housing costs to, and occupied by, persons and families of very low, low, or moderate income for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units and that any in-lieu fees paid for off-site housing shall have similar covenants and restrictions.
4. Parking. Parking (which may be publicly- or privately-owned) that directly serves other Facilities (including, but not limited to, affordable housing and childcare facilities). To the extent that only a portion of the parking directly serves other Facilities, then the costs of the parking that may be financed by the EIFD shall be calculated based on the square footage of the parking that directly serves other Facilities.
5. Childcare Facilities.
6. Rideshare improvements, including without limitation, improvements under the Transportation Demand Management Plan.
7. TDM Measures, as defined in the Transportation Demand Management Plan.
8. The demolition, abatement, stabilization and/or rehabilitation of existing structures necessary to enable development of the Projects. For the avoidance of doubt, because demolition, abatement, stabilization and/or rehabilitation of the existing improvements is a prerequisite to the construction and delivery of the Projects, including the creation of housing that funds the affordable housing (in-lieu or constructed) and the EIFD Improvements, all such activities and associated costs shall be considered as a cost of the EIFD Improvements.
9. Contributions for the construction of any required tenant improvements of the Walnut Child Care Parcel and associated parking, as defined in the Development Agreement, or any other community facilities located at or near the Project.
10. Subject to the provisions hereof (including, but not limited to, Section 6.4), the 3700 California Affordable Housing In-Lieu Fees used to construct housing units in accordance with the IFP and the EIFD Law. The EIFD shall require, by recorded covenants or restrictions, that housing units built with financial assistance from the EIFD shall remain available at affordable housing costs to, and occupied by, persons and families of very low, low, or moderate income for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units.
11. To the extent they are used to pay Actual Costs of Qualified EIFD Improvements, and subject to the provisions of this Agreement (including Section 6.4), (i) the Jobs Housing Linkage Fees defined in the Development Agreement, (ii) the AWSS Community Benefit

Fee defined in the Development Agreement, (iii) fees imposed by the City on the Projects after EIFD formation and (iv) fees imposed by the City on the Projects prior to EIFD formation that are modified by the City after EIFD formation.

EXHIBIT B

Description of EIFD Improvements, with Cost Estimates

[To be completed from time to time]

Form of Exhibit B Checklist to be included with all Exhibit B Supplements:

City and County of San Francisco –3333/3700 California Street Reimbursement Request

Supplemental Exhibit B Checklist

Supplemental No.

Proposed Facilit(ies)/Component(s):

Submittal Date:

Supporting Documentation:

☐ Reasonably detailed descriptions of each Acquisition Facility, Privately-Owned Facility and Component included in the proposed Exhibit B Supplement

☐ Estimates of the Actual Costs of each Acquisition Facility, Privately-Owned Facility and Component included in the proposed Exhibit B Supplement

☐ Proposed Developer Allocation, if applicable

☐ Executed contracts and related change orders, along with written summary of solicitation/award process

☐ Acknowledged PCOW(s), if applicable

For the Walnut Affordable Housing Building:

☐ Estimate of proposed sources and uses

☐ Copies of any applications submitted for local, State or Federal grant or loan financing

☐ Copy of (A) the Notice of Special Restrictions (Affordable Housing) and (B) if the Notice of Special Restrictions (Affordable Housing) does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law

☐ Plans

☐ Copy of the Affordable Housing Conveyance Agreement

☐ Estimate of projected operating cash flow at stabilization

EXHIBIT C

Form of Payment Request – Acquisition Facilities and Components

PAYMENT REQUEST NO. _____
MADE ON BEHALF OF: _____ (“Developer”)
DEVELOPMENT PHASE: _____

[Laurel Heights Partners, LLC or California 3700 LLC] (the “Developer”) hereby requests payment in the total amount of \$ _____ for the Acquisition Facilities or Components as described in Exhibit B to that certain EIFD Acquisition and Financing Agreement (the “Acquisition Agreement”) among the City and County of San Francisco, the San Francisco Enhanced Infrastructure Financing District No. 3 (3333/3700 California Street), Laurel Heights Partners, LLC, and California 3700 LLC, dated for reference purposes only as of _____, 20__ all as more fully described in Exhibit C-1. In connection with this Payment Request, the Developer hereby represents and warrants to the Director of Public Works and the City to the actual knowledge of the undersigned, as follows:

1. The undersigned is a duly authorized officer or representative of Developer, qualified to execute this Payment Request for payment on behalf of Developer.
2. The Acquisition Facilities or Components for which payment is requested were constructed in accordance with approved Plans [and for 3333 California Street Project: and the Development Agreement (including, but not limited to, compliance with the Workforce Agreement and payment of prevailing wage)], 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 costs 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 Agreement (including, but not limited to, payment of prevailing wage) 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 Agreement.

7. To the actual 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 then-owned by Developer in the Project Site.

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

Identified Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
EIFD Funding Sources	Proceeds of EIFD Bonds
	Allocated Tax Revenue
CFD Funding Sources (3333 California Street Project only)	Proceeds of CFD Bonds for Improvement Area No. _____
	CFD Remainder Taxes for Improvement Area No. _____
Total Actual Cost	

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

9. Payments under this Payment Request, when approved, to be made as follows:

[] The amount of \$ _____ to Laurel Heights Partners, LLC by wire, according to the following instructions:

[] The amount of \$ _____ to California 3700 LLC by wire, according to the following instructions:

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

10. Other relevant information about Payment Request: _____

The Developer hereby declares that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the actual knowledge of the undersigned.

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 Acquisition Facility Determination of Completion
- ☐ **For Completed Acquisition Facility:** Original assignment of warranties and guaranties
- ☐ **For Completed Acquisition Facility:** Original assignment of Plans
- ☐ **For Completed Acquisition Facility:** As-built drawings of the Acquisition Facility
- ☐ Exhibit C-1
- ☐ Exhibit C-2

Payment Request approved on _____.

By: _____
Director of Public Works

EXHIBIT C-1

Acquisition Facilities and Components to Which Payment Request Applies

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

1. The Acquisition Facilities and Components for which payment of Actual Costs 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)

☐ Proof of Payment for each amount and included in the Actual Costs

EXHIBIT C-2

Calculation of Actual Cost

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

1. Description (by reference to Exhibit B to the EIFD Acquisition and Financing 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. Retention (see Section 4.4(d) of the EIFD Acquisition and Financing Agreement): (\$ _____)
 - B. Third Party Reimbursements: (\$ _____)
4. Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3): \$ _____

Attachments – Complete Acquisition Facilities Only:

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

EXHIBIT D

Form of Payment Request – Privately-Owned Facilities and Components

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____ (“Developer”)

[Laurel Heights Partners, LLC or California 3700 LLC] (the “Developer”) hereby requests payment in the total amount of \$_____ for the Privately-Owned Facilities as described in Exhibit B to that certain EIFD Acquisition and Financing Agreement among the City and County of San Francisco, San Francisco Enhanced Infrastructure Financing District No. 3 (3333/3700 California Street), Laurel Heights Partners, LLC, and California 3700 LLC, dated for reference purposes only as of _____, 20__ (the “Acquisition Agreement”), all as more fully described in Exhibit D-1. In connection with this Payment Request, the Developer hereby represents and warrants to the Director of Public Works and the City to the actual knowledge of the undersigned as follows:

1. The undersigned is a duly authorized officer or representative of Developer, qualified to execute this Payment Request for payment on behalf of Developer.
2. The Privately-Owned Facilities or Components for which payment is requested were constructed in accordance with the approved Plans [and for 3333 California Street Developer: and the Development Agreement (including, but not limited to, compliance with the Workforce Agreement and payment of prevailing wage)] and inspected pursuant to Section 5.1 of the Acquisition Agreement.
3. All costs of the Privately-Owned 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 costs 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 Agreement (including, but not limited to, payment of prevailing wage) and no portion of the amount being requested to be paid was previously paid.
6. The Actual Cost of each Privately-Owned Facility or Component (a detailed calculation of which is shown in Exhibit D-2 for each such Privately-Owned Facility or Component), has been calculated in conformance with the terms of the Acquisition Agreement.
7. To the actual 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 then-owned by Developer in the Project Site.

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

Identified Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
EIFD Funding Sources	Proceeds of EIFD Bonds
	Allocated Tax Revenue
CFD Funding Sources (3333 California Street Project only)	Proceeds of CFD Bonds for Improvement Area No. _____
	CFD Remainder Taxes for Improvement Area No. _____
Total Actual Cost	

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

9. Payments under this Payment Request, when approved, to be made as follows:

[] The amount of \$ _____ to Laurel Heights Partners, LLC by wire, according to _____ the following instructions:

[] The amount of \$ _____ to California 3700 LLC by wire, according to the following instructions:

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

10. Other relevant information about Payment Request: _____

The Developer hereby declares that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the actual knowledge of the undersigned.

DEVELOPER:

[insert name of Developer]

By: _____
Authorized Representative
of Developer

Date: _____

Attachments:

☐ Notice of approval following inspection

☐ Unconditional lien releases from the following: _____

☐ Conditional lien releases from the following: _____

☐ **For Completed Privately-Owned Facility:** Temporary certificate of occupancy (where applicable)

☐ **For Completed Privately-Owned Public Open Spaces:** Declaration of Public Open Space Covenants and Restrictions

☐ **For the Completed Walnut Affordable Housing Building:** Notice of Special Restrictions (Affordable Housing) and covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law

☐ Exhibit D-1

☐ Exhibit D-2

Payment Request Approved on _____.

By: _____
Director of Public Works

EXHIBIT D-1

Privately-Owned Facilities and Components to Which Payment Request Applies

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

1. The Privately-Owned Facilities and Components for which payment of Actual Costs is requested under this Payment Request are: _____

* Components of the Walnut Affordable Housing Building cannot be financed separately. This restriction does not apply to the financing of the 3700 California Street Affordable Housing In-Lieu Fees.

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)

☐ Proof of Payment for each amount and included in the Actual Costs

EXHIBIT D-2

Calculation of Actual Cost

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

1. Description (by reference to Exhibit B to the EIFD Acquisition and Financing Agreement) of the Privately-Owned Facilities 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. Third Party Reimbursements: (\$ _____)
4. Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3): \$ _____

* Components of the Walnut Affordable Housing Building cannot be financed separately.

EXHIBIT E

Contracting Provisions for 3700 California Street Project

Contracting for Acquisition Facilities. This paragraph shall apply to the 3333 California Street Project to the extent not inconsistent with the Development Agreement, and the 3700 California Street Project. In connection with construction of the Acquisition Facilities, each Developer shall engage a contractor that is duly licensed in the State and qualified to complete the work (the “**Contractor**”). The Contractor shall contract directly with the Developer pursuant to an agreement to be entered into by the Developer and the Contractor, which shall: (i) be a guaranteed maximum price or lump sum contract; (ii) require contractor to maintain bonds and insurance for the benefit of the Developer and the City in accordance with the Subdivision Code; (iii) require the Contractor to obtain and maintain customary insurance, including workers compensation in statutory amounts, employer’s liability, general liability, and builders all-risk; and (iv) release the City from any and all claims relating to the construction, including to mechanics liens and stop notices.

Prevailing Wages and Working Conditions. This paragraph shall only apply to the 3700 California Street Project. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms “public work” and “paid for in whole or part out of public funds” are defined in and subject to exclusions and further conditions under California Labor Code sections 1720–1720.6. In connection with the public works on the Project, the 3700 California Street Developer shall comply with all California public works requirements as and to the extent required by State Law. In addition, the 3700 California Street Developer agrees that all workers performing labor in the construction of the Acquisition Facilities will be (i) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), (ii) provided the same hours, working conditions, and benefits as in each case are provided for similar work performed in the City in Administrative Code section 6.22(f) and (iii) employ apprentices in accordance with Administrative Code Section 23.61. Any contractor or subcontractor constructing Acquisition Facilities must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. The City’s Office of Labor Standards Enforcement (“**OLSE**”) enforces applicable labor Laws on behalf of the City, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, all to the extent required hereunder.

The 3700 California Street Developer acknowledges that EIFD Funding Sources can only pay for the Actual Costs of Acquisition Facilities or Privately-Owned Facilities where prevailing wages were paid for such EIFD Improvements.

AB 900. This paragraph applies only to the 3333 California Street Project. The Parties acknowledge that the 3333 California Street Project has been certified as an Environmental Leadership Development Project pursuant to AB 900 and accordingly as of the date of the Development Agreement is required to pay prevailing wages to the extent required under section

21183(b) of the Public Resources Code. OLSE may enforce the prevailing wage requirements of section 21183(b) of the Public Resources Code to the extent required by State Law or pursuant to an agreement approved by the California Labor Commission in a form that is generally applicable to Environmental Leadership Development Projects located in the City.

EXHIBIT F

Potential Change of Work Form

Potential Change of Work ("PCOW")

The purpose of this form is to acknowledge a change in work for the intent of reimbursement of CFD costs.

Date: _____

PCOW No. _____

Description of Contract: _____

Vendor Name: _____

**Contract Number/Change
Order Number:** _____

Potential Change of Work description:

Total Estimated Amount of PCOW: _____ **

Developer Review:

Developer Representative

Date

City Acknowledgment:

	Acknowledged and is EIFD eligible
--	--------------------------------------

City comments:

Reviewed by:

City Representative

Date

** Estimates only. The Actual Costs of the work is eligible for financing.