

FP Exhibit A



**CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR**

---

**ACQUISITION AND REIMBURSEMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO  
OPERATING BY AND THROUGH THE  
SAN FRANCISCO PORT COMMISSION**

**AND**

**FOREST CITY DEVELOPMENT CALIFORNIA, INC.,  
A CALIFORNIA CORPORATION**

---

**ELAINE FORBES  
INTERIM EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**WILLIE ADAMS, PRESIDENT  
KIMBERLY BRANDON, VICE PRESIDENT  
LESLIE KATZ, COMMISSIONER  
ELENI KOUNALAKIS, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

**[PROJECT APPROVAL DATE]**

[Page intentionally left blank.]

## TABLE OF CONTENTS

Page

## **APPENDIX**

### **EXHIBITS**

- AA Exhibit A Horizontal Improvements
- AA Exhibit B Preliminary Acquisition Prices for Phase Improvements
- AA Exhibit C Form of Payment Request
- AA Exhibit C1 Form: Development Improvements to which Payment Request Applies
- AA Exhibit C2 Form: Horizontal Development Costs & AA Allocation Proposal

## ACQUISITION AND REIMBURSEMENT AGREEMENT

This **ACQUISITION AND REIMBURSEMENT AGREEMENT** (this “**Acquisition Agreement**”), dated for reference purposes only as of the Project Approval Date, is between the **CITY AND COUNTY OF SAN FRANCISCO** (the “**City**”), acting by and through the **PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO** (the “**Port**”), and **FOREST CITY DEVELOPMENT CALIFORNIA, INC.** (“**Developer**”), a California corporation. Developer and the Port are each a “**Party**” to this Acquisition Agreement.

Initially capitalized and other terms are defined in as specified in the attached Appendix, which contains standard provisions, rules of interpretation, and definitions applicable to all Transaction Documents and this Acquisition Agreement.

### RECITALS

A. The Port and Developer have entered into the DDA, under which Developer is obligated to construct Horizontal Improvements at the Project Site. The Port must meet its Project Payment Obligation under the DDA reimbursing Developer for Horizontal Development Costs it incurs for Developer Improvements, together with Developer Return. The Port will make these payments to Developer on behalf of all Acquiring Agencies to acquire the Developer Improvements from Developer.

B. The Port and the City have entered into the Tax Allocation MOU under which the City agrees to take actions necessary to implement the Public Financing Sources for Horizontal Development Costs as described in the Financing Plan in the DDA. In addition to the Public Financing Sources, the Port will use Advances of Land Proceeds and may elect to use Advances of Port Capital to make payments to Developer and satisfy the Project Payment Obligation.

C. This Acquisition Agreement describes the procedures by which, at Developer’s request, the Port will:

1. pay Developer the Entitlement Sum;
2. inspect and accept on its own behalf, or cause each Other Acquiring Party to inspect and accept, the Developer Improvements listed in **AA Exhibit A** (Horizontal Improvements), as supplemented from time to time under **Section 1.2** (Horizontal Improvements);
3. review and accept preliminary Acquisition Prices for the Phase Improvements listed in **AA Exhibit B** (Preliminary Acquisition Prices), and as supplemented under **Section 1.4** (Acquisition Price Updates); and
4. pay Developer for Developer Improvements as Project Payment Sources become available to the Port in accordance with the Financing Plan.

### AGREEMENT

#### 1. PURPOSE AND INTENT.

**1.1. Implementation.** This Acquisition Agreement:

- (a) implements and is subject to all limitations of the DDA and the Financing Plan;
- (b) will become effective on the date this Acquisition Agreement is fully executed and delivered; and
- (c) describes the procedures by which, at Developer’s request, the Port will use available Project Payment Sources to pay Developer the Entitlement Sum and the Acquisition Prices of Developer Improvements as described in the Financing Plan.

**1.2. Horizontal Improvements.** The Parties intend **AA Exhibit A** (Horizontal Improvements), as attached when this Acquisition Agreement is executed, to be a complete list of all Horizontal Improvements for which Developer could incur Horizontal Development Costs. **AA Exhibit A** (Horizontal Improvements) contains reasonably detailed descriptions of Horizontal Improvements that are part of the Developer Construction Obligations for the Project, all of which are eligible to be financed by

Project Payment Sources under the Financing Plan. If the scope of Horizontal Improvements changes during the course of the Project, Developer must submit proposed revisions to **AA Exhibit A** from time to time for the Port's review and approval. The Port will not be required to pay from any Project Payment Source the Horizontal Development Costs of any Improvement that is not listed in **AA Exhibit A** (Horizontal Improvements) and approved revisions.

**1.3. Acquisition Prices.** Developer Improvements are Horizontal Improvements for which Developer pays using Developer Capital. In addition to the Phase Approval procedures in *DDA art. 3 (Phase Approval)* and Construction Document approval requirements in *DDA art. 13 (Construction Documents)*, procedures in this Acquisition Agreement will apply to Acquisition Prices.

(a) Preliminary Acquisition Prices in Phase Applications.

i. In connection with each Phase Application, Developer must provide Construction Documents for Phase Improvements, an updated proforma that includes updated estimates of the Horizontal Development Costs of Phase Improvements, and a breakdown of Phase Improvements by Components and associated preliminary Acquisition Prices in the form of **AA Exhibit B** (Preliminary Acquisition Prices). The Port Commission's Phase Approval will include approval of the Phase Budget reflecting the approved Acquisition Prices of Phase Improvements. The Port will not be obligated to pay for any Component of any Developer Improvement for which Developer has not obtained approval of its Acquisition Price, as amended by Acquisition Price Updates approved or deemed approved under this Section.

ii. Before the Port Commission considers each Phase Application, the Port will deliver, through the Director of Public Works, copies of Construction Documents and preliminary Acquisition Prices in the submittal to each Other Acquiring Party for review under *ICA § 4.2 (Phase Applications)*.

(b) Acquisition Price Updates.

iii. Contemporaneously with its submittal of additional Construction Documents for Horizontal Improvements, Developer may submit proposed Acquisition Price Updates to the Acquisition Prices approved in the Phase Budget. Each proposed Acquisition Price Update must: (1) provide additional detail on Components of the Phase Improvements; (2) update and allocate the Acquisition Price Updates to Components corresponding to Developer's anticipated Payment Requests; and (3) otherwise update any other information relevant to the Acquisition Prices.

(c) Consultation with Acquiring Agencies. Before submitting a proposed AA Supplement, Developer may request through the Port to meet with the applicable Acquiring Parties to establish required contents of AA Supplements to the Acquisition Facilities List or the Acquisition Price List. The Port will provide a copy of Developer's request to other appropriate Acquiring Parties within five business days after Developer's request. To expedite review, Developer may deliver a copy of its request to other applicable Acquiring Parties simultaneously with delivery to the Port.

(d) Contents. An Acquiring Party will be required to review a proposed AA Supplement only if it contains all of the information described in **Section 1.2** (Acquisition Facilities List) or **Section 1.3** (Acquisition Price List), as applicable, and any supporting materials the Acquiring Party reasonably requests in connection with the proposed AA Supplement. The AA Supplement will not be complete until Developer has complied with an Acquiring Party's request for supporting materials.

(e) AA Review Periods. The AA Review Period for an Acquiring Party to accept or object to any portion of the proposed AA Supplement will be 30 business days after Developer has submitted the complete AA Supplement proposal. Developer may resubmit any proposed AA Supplement to which the Acquiring Party has timely objected, and the Acquiring Party will have 15 business days after receipt to review any resubmitted proposed AA Supplement. Each

Acquiring Party must deliver a notice of approval or disapproval through the Port to Developer within the AA Review Period

(f) Grounds for Disapproval. Any notice of disapproval of a proposed AA Supplement to the Acquisition Facilities List the Acquisition Price List must state with specificity the Acquiring Party's grounds for disapproval, which must be made in good faith. An Acquiring Party may disapprove an AA Supplement to either list on any of the grounds specified below.

iv. Developer has included a Horizontal Improvement or Component that was not previously listed or that may not be financed under Governing Law and Policy.

v. Developer's proposed AA Supplement is not consistent with prior approvals or the Financing Plan.

vi. The proposed AA Supplement includes changes to Phase Improvements after Developer has begun horizontal construction for the Current Phase.

vii. The proposed AA Supplement includes changes to a Phase Improvement after Developer has requested a determination that it is Substantially Complete under *DDA § 15.4 (Substantial Completion)* or an inspection under **Section 3.1 (Inspection)**.

(g) Deemed Approval. If the Acquiring Party fails to deliver notice to Developer that an AA Supplement is disapproved within the AA Review Period, then the AA Supplement will be a Deemed Approved AA Supplement.

(h) AA Supplement for Each Phase. [Discuss appropriate cutoff time for new AA Supplements: At any time before submitting the permit application to begin construction of Phase Improvements,] Developer may submit one or more proposed AA Supplements to the Acquisition Facilities List pertinent to the Current Phase for the Port's review in accordance with **Section 1.4 (AA Supplements)**. Each proposed AA Supplement must describe in reasonable detail any proposed revisions or additions to Phase Improvements.

(i) Amendments. Each Approved AA Supplement and Deemed Approved AA Supplement will amend the Acquisition Facilities List or the Acquisition Price List, as applicable, without further Port action.

#### **1.4. Project Payment Sources.**

(a) Limitation. The Port will not be obligated to pay the Entitlement Sum, the Horizontal Development Costs of Developer Improvements, or accrued Developer Return under this Acquisition Agreement except from Project Payment Sources. Except for Excess Return to be paid from Project Payment Sources specified in the Financing Plan, the Port will have no liability to pay any Horizontal Development Cost that is ineligible to be financed by Public Financing Sources under Governing Law and Policy, even if it was included in the Acquisition Facilities List or any Approved AA Supplement or Deemed Approved AA Supplement.

(b) Escrow Bonds. Developer acknowledges that if the Port and Developer agree to issue escrow bonds for the Project, and bond proceeds are deposited in an escrow fund, escrowed amounts will become Project Payment 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 Port agrees to take all reasonable actions necessary to cause the release of funds from an escrow fund after all conditions for their release have been satisfied.

(c) No Payment Guaranty. The Port makes no warranty, express or implied, that Project Payment Sources will be sufficient to pay for the Entitlement Sum, all of the Horizontal Improvements, and accrued Developer Return.

## 1.5. Deposits of Project Payment Sources.

(d) Bond Proceeds. The proceeds of any 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 Acquisition Agreement. The portion of bond proceeds that is used to fund reserves for debt service, to capitalize interest on the bonds, and to pay costs of issuance and administration will not be available to make payments to Developer.

(e) Special Fund Trust Account. Mello-Roos Taxes, Allocated Tax Increment, and Land Proceeds will be deposited in the Special Fund Trust Account described in the Financing Plan and held and disbursed as specified in the Special Fund Administration Agreement.

(f) Investment Policy. Developer acknowledges that [the City][the Port] will direct the investment of Project Payment Sources in accordance with its investment policy, all applicable laws, and the applicable Indentures. The [Port][City] will have no responsibility to Developer with respect to any investment of Project Payment Sources before their use under this Acquisition Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment so long as the investments were made in accordance with all applicable laws and the applicable Indenture, even if a loss diminishes the amount of available Project Payment Sources.

## 2. CONSTRUCTION OF HORIZONTAL IMPROVEMENTS.

**2.1. Obligation to Construct.** The Developer Construction Obligations are governed solely by the DDA. This Acquisition Agreement does not create an obligation to construct any Horizontal Improvement. This Article applies only to those Developer Improvements for which Developer seeks payment under this Acquisition Agreement.

**2.2. Relationship to Public Works Contracting Requirements.** This Acquisition Agreement provides for the Port's payment for and acquisition of Horizontal Improvements from time to time from Project Payment Sources and is not intended to be a public works contract. In that regard, the Port and Developer agree to all of the following statements.

(a) Local Concern. The construction of Horizontal Improvements and Components is of local, and not statewide, concern.

(b) Private Work. Neither the California Public Contract Code nor the City's public works requirements apply to Developer's construction of the Horizontal Improvements.

(c) Private Contracts. Developer will award all contracts for the construction of the Horizontal Improvements.

(d) No Advantage. Requiring Developer to comply with the Public Contract Code and the City's public works requirements would be incongruous and would not produce an advantage to the City, the Port, or the Project.

(e) Compliance with DDA. Developer agrees to award all contracts for construction of the Horizontal Improvements as provided in the DDA.

(f) Consultation with Acquiring Parties. From time to time at the Port's request, representatives of Developer will meet and confer with staff, consultants, and contractors of the Acquiring Parties regarding matters arising under this Acquisition Agreement with respect to the Horizontal Improvements, progress in constructing and acquiring them, and any other matter related to the Horizontal Improvements or this Acquisition Agreement. Staff of the applicable Acquiring Parties will have the right to: (i) attend (and at the request of Developer will attend) meetings between Developer and its contractors relating to the Horizontal Improvements; and (ii) meet and confer with individual contractors and Developer at the Port's request to resolve disputes or ensure proper construction of the Horizontal Improvements.

### 2.3. Independent Contractor.

(a) No Obligation to Contractors. In performing under this Acquisition Agreement, Developer is an independent contractor and not the agent or employee of the Port, the City, the CFD, or the IFD. Except as otherwise provided in this Acquisition Agreement, the Port, the City, the CFD, and the IFD has no obligation to make payments to any contractor, subcontractor, agent, consultant, employee, or supplier of Developer.

(b) Port Determination. The Port has determined that it would obtain no advantage by directly undertaking the construction of the Horizontal Improvements, and that the DDA requires that the Horizontal Improvements be constructed by Developer as if they had been constructed under the direction and supervision, or under the authority, of the applicable Acquiring Party.

**3. ACQUISITION OF DEVELOPER IMPROVEMENTS.Application.** This Article applies only to Developer Improvements for which Developer seeks the payment under this Acquisition Agreement. The Parties agree that the Acquisition Price List represents Developer's best estimate of the fair market value of the Horizontal Improvements as of the Project Approval Date, without prejudice to Developer's right and obligation to update Acquisition Prices by AA Supplements and of the pertinent Acquiring Parties' rights to review and approve each AA Supplement under this Acquisition Agreement.

### 3.2. Inspection at Completion.

(a) Obligation to Pay. Except as set forth in **Section 3.5** (Component Financing), the Port will not be obligated under this Acquisition Agreement to pay the Acquisition Price of any Horizontal Improvement to Developer until the applicable Acquiring Party has inspected it, found it to be suitable for its intended use, and determined it to be Finally Complete in conformance with approved Construction Documents and otherwise consistent with the DDA and any applicable City Laws.

(b) Inspection Request. Developer may initiate an inspection by delivering to the Chief Harbor an Inspection Request. The Chief Harbor Engineer will forward a copy of the Inspection Request to the applicable Acquiring Party within **XXXX** business days after the Inspection Request is delivered.

(c) Inspection Procedures. Each Acquiring Party will be responsible for providing Developer with written procedures for inspection of Horizontal Improvements before construction begins at the Project Site. Inspection procedures must be consistent with the DDA, the ICA, this Acquisition Agreement, and applicable City Laws. If inspection procedures are not timely delivered, the standards in the DDA and the ICA will apply to all inspections.

(d) Inspection. Each Acquiring Party will be responsible for conducting a requested inspection with due diligence and in a reasonable time given the scope of the inspection but not to exceed 21 days after the Chief Harbor Engineer has transmitted Developer's Inspection Request. Within five days after conducting an inspection, the Acquiring Party must provide notice to Developer that the Horizontal Improvement has been approved as inspected or deliver the Acquiring Party's punch list of items to be corrected, with a copy to the Chief Harbor Engineer.

**3.3. Restrictions on Payments.** The Port may provide notice to Developer at any time until the last date on which the Port may require a Port Audit for a Phase if the Port believes that Horizontal Development Costs of a Phase Improvement exceed its fair market value, if not previously established in accordance with *DDA § 3.4 (Phase Budget)*, **Section 1.3** (Acquisition Price List), and **Section 1.a.i** (AA Supplements). Promptly following the Port's notice, the Port and Developer will meet and confer to review the Horizontal Development Costs and make reasonable good faith efforts to reach an agreed determination of fair market value to establish the Acquisition Price. **[Dispute resolution measures?]**

**3.4. Purchase and Sale.** Developer agrees to sell Developer Improvements at their Acquisition Prices to the Acquiring Parties through the Port, and the Port agrees to use Project Payment Sources to pay Developer the Acquisition Prices of Developer Improvements, subject to the Tax Allocation MOU, this Acquisition Agreement, and the Financing Plan.

### 3.5. Component Financing.

(a) Components Valued up to \$1 Million. Section 53313.51(a) of the CFD Law and section 53395.8(g)(12)(a) of the IFD Law authorize the purchase of a specific Horizontal Improvement or Components capable of serviceable use as determined by the Acquiring Party. Subject to the availability of Project Payment Sources, the Port agrees to pay to Developer the Acquisition Price of Components up to the \$1 million threshold under this Section before Developer has: (i) completed the Horizontal Improvement of which the Component is a part (unless it is the final Component of a Horizontal Improvement); or (ii) transferred title to the Horizontal Improvement to the Acquiring Party. A reasonably detailed description and the Acquisition Price of each Component to be financed under this Section must be listed on **AA Exhibit B** through an Approved AA Supplement or Deemed Approved AA Supplement.

(b) Components Valued More Than \$1 Million. If the Acquisition Price of a Horizontal Improvement exceeds \$1 million, section 53313.51 of the CFD Law and section 53395.8(g)(12) of the IFD Law authorize the purchase of Components whether or not the Components are capable of serviceable use. Subject to the availability of Project Payment Sources, the Port agrees to pay to Developer the Acquisition Price of Components of Horizontal Improvements above the \$1 million threshold before Developer has: (i) Substantially Completed the Horizontal Improvement of which the Component is a part (unless it is the final Component of a Horizontal Improvement); or (ii) transferred title to the Horizontal Improvement to the Acquiring Party. A reasonably detailed description and estimated Acquisition Price of each Component to be financed under this Section must be listed on **AA Exhibit B** through an Approved AA Supplement or Deemed Approved AA Supplement. [Review def and codes.]

(c) Acceptance of Horizontal Improvements. Developer acknowledges that no Acquiring Party will be obligated to accept a Horizontal Improvement of which a Component is a part until the entire Horizontal Improvement has been constructed as required under the DDA and determined to be Finally Complete under DDA § XXXX [Add to DDA and ICA] and **Section 3.2** (Inspection at Completion). The Port acknowledges that a Component does not have to be accepted by the Acquiring Party as a condition precedent to the paying the Acquisition Price of the Component.

**3.6. Defective or Nonconforming Work.** This Section will apply if an Acquiring Party finds any of the work done or materials furnished for a Horizontal Improvement or Component to be defective or nonconforming to approved Construction Documents and City Laws. If the finding is made before the Port has paid the Acquisition Price to Developer, the Port may withhold the payment until the defect or nonconformity is corrected to the Acquiring Party's satisfaction. If the finding is made after the Port has paid the Acquisition Price to Developer, then the DDA will govern cure rights and obligations. [Cross-reference DDA]

## 4. PAYMENT REQUESTS.

**4.1. Initiating Payment Process.** To initiate the process for payment, Developer must deliver to the Chief Harbor Engineer a Payment Request in the form of **AA Exhibit C** that contains all relevant information, including all required attachments in an organized manner.

(a) Entitlement Sum. To receive reimbursement of the Entitlement Sum, Developer must deliver a Payment Request that contains all required information and attachments, as applicable.

(b) Costs of Developer Improvements. Each Payment Request for Developer Improvements must include: (i) a copy of the Chief Harbor Engineer's notice that the applicable Acquiring Party has inspected the Horizontal Improvement or Component and approved payment of its Acquisition Price or, if applicable, evidence reasonably acceptable to the Port that the applicable Acquiring Party has inspected the Horizontal Improvement or Component and approved payment of its Acquisition Price; and (ii) acceptable forms of proof of payment for the Horizontal Development Costs to be reimbursed by the payment.

(a) Contract Terms and Lien Releases. Any Payment Request for a Component (other than the final Component of a Horizontal Improvement) must be supported by: (i) a statement in the form of **AA Exhibit C-1** specifying each contractor, subcontractor, materialman, and other person with whom Developer or its contractor has entered into contracts with respect to any Component included in the Payment Request; (ii) the contract amount for each contract; (iii) a statement in the form of **AA Exhibit C-2** specifying the manner in which the amount of the requested Acquisition Price was calculated and attributed to each Horizontal Improvement and Component; and (iv) signed and acknowledged unconditional or conditional lien releases and waivers (in the form required under Cal. Civil Code § 3262) from all contractors, subcontractors, materialmen, consultants, and other persons that Developer retained in connection with the Component, in each instance unconditionally or conditionally waiving all lien and stop notice rights with respect to the pending payment.

(b) Final Payment. The final Payment Request for a Horizontal Improvement also must include: (i) a copy of the determination of completeness issued by the Chief Harbor Engineer under **Section 3.2** (Inspection at Completion) or similar evidence that the applicable Acquiring Party has found that Developer has Finally Completed the Horizontal Improvement; (ii) a signed assignment of warranties and guaranties for the Horizontal Improvement, in a form acceptable to the Acquiring Party; (iii) as-built drawings and an executed assignment of the Construction Documents, to the extent reasonably obtainable; and (iv) an executed assignment of reimbursements, if any, from third parties payable with respect to the Horizontal Improvements, such as utility or other reimbursements, to be used by the Port to repay Debt or to be added to Project Payment Sources unless the amount of the reimbursement is deducted from the Payment Request.

(c) Proposed Sources. Developer must indicate in each Payment Request the proposed Project Payment Sources to be used to satisfy the Payment Request when approved. Developer's proposal must be consistent with the Phase Budget for the Phase in which Developer incurred the Horizontal Development Costs to be reimbursed under the Payment Request.

(d) Cost Allocation. Each Payment Request must include the AA Allocation Proposal in the form of **AA Exhibit C-2** specifying how Developer has allocated the following categories of Horizontal Development Costs in the calculation of Acquisition Prices: (i) Horizontal Development Costs that apply to more than one Horizontal Improvement or Component (e.g., Soft Costs such as design fees and Hard Costs such as City Agency inspection and review fees); (ii) Horizontal Development Costs that apply to both Horizontal Improvements and other Improvements (e.g., Hard Costs such as grading); and (iii) for Horizontal Improvements to be purchased in Components, the amount of the Acquisition Price allocated to each Component, or a reasonable, objective method to be used to allocate among Components. Developer's AA Allocation Proposal in a Payment Request will be presumed to be reasonable and will be accepted for all purposes of this Acquisition Agreement unless the Port Finance Director notifies Developer of the Port's good-faith reasonable objection to the AA Allocation Proposal within five days after the Port Finance Director receives the Payment Request for processing. [Dispute Resolution; no obligation to pay while dispute is pending.]

#### **4.2. Processing Payment Requests.**

(a) Completeness Determination. Within 10 days after delivery of any Payment Request, the Chief Harbor Engineer will review the Payment Request to determine if it is complete or incomplete. If incomplete, the Chief Harbor Engineer will have the right to request and receive additional information and documentation reasonably necessary to complete the review. If the Chief Harbor Engineer fails to notify Developer within the 10-day review period that a Payment Request is incomplete, the Payment Request will be deemed complete. Developer agrees to cooperate with the Chief Harbor Engineer in conducting each completeness review and to provide the Chief Harbor Engineer with any additional information and documentation that is reasonably necessary for the Chief Harbor Engineer to conclude each review.

(b) Notice to Developer. Within 30 days after the date a Payment Request is determined or deemed to be complete under **Subsection 4.2(a)** (Completeness Determination, the Chief Harbor Engineer must review the Payment Request to confirm that all conditions of **Article 3** (Acquisition of Developer Improvements) and **Section 4.1** (Initiating Payment Process) have been satisfied, to the extent applicable. The Chief Harbor Engineer also must provide notice to Developer either that: (i) the Payment Request is approved by delivering a countersigned copy of the Payment Request to Developer; or (ii) the Payment Request is disapproved, specifying in the notice the reasons for disapproval. If the Payment Request is disapproved, Developer may revise and resubmit it for approval, and the Chief Harbor Engineer 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 the greater of 10 days and the remaining number of days in the 30-day period for determining the completeness of the Payment Request.

(c) Deemed Approval. If the Chief Harbor Engineer fails to notify Developer within the review period that a Payment Request is approved or disapproved, then the Payment Request will be deemed approved.

#### **4.3. Processing Payments.**

(a) Port Finance Director. Within five days after approving a Payment Request, the Chief Harbor Engineer must forward the original signed Approved Payment Request to the Port Finance Director. If the Chief Harbor Engineer has not forwarded the Approved Payment Request within that period, Developer will have the right to deliver a Deemed Approved Payment Request, consisting of the Payment Request, together with proof of its delivery to the Chief Harbor Engineer, directly to the Port Finance Director, with a copy to the Chief Harbor Engineer.

(b) Disbursements. The Port Finance Director must submit to the Escrow Agent, the Indenture Trustee, or the Fiscal Agent, as applicable, all documentation required for disbursements needed to satisfy a Payment Request to the extent of available Project Payment Sources within 15 business days after receiving the Approved Payment Request or Deemed Approved Payment Request. If specified in a Payment Request, the Port will direct payments under any Approved or Deemed Approved Payment Request directly to a third party to which payment is owed.

(c) Project Payment Sources. After a Payment Request is paid in full, the Port Finance Director must annotate the Payment Request to reflect the actual Project Payment Sources disbursed for payment. The Port will include provide copy of the annotated Payment Request to Developer in the next Port Quarterly Report. [Add to DDA.]

#### **4.4. Right to Withhold Payment.**

(a) Final Payment for Completed Improvements. The Port may withhold final payment for any Finally Completed Horizontal Improvement (if it has no Components) or the final Component of any Finally Completed Horizontal Improvement until: (i) the Completed Horizontal Improvement has been inspected and approved under *DDA* § XXXX [Add to DDA and ICA] and **Section 3.2** (Inspection at Completion); (ii) any City action required to accept dedication of or transfer of title to a Horizontal Improvement becomes final and Developer has satisfied the requirements of **Section 4.1** (Initiating Payment Process) to the extent applicable; and (iii) Developer has delivered general lien releases for the Horizontal Improvement (conditioned solely upon payment) to the Chief Harbor Engineer.

(b) Retention. The Port will be entitled to withhold from the amounts payable under each Payment Request a portion for retention as authorized by the Acquiring Party's policies and procedures, not to exceed in the aggregate 10 percent of the amount of the Acquisition Price of a Horizontal Improvement as set forth in **AA Exhibit B**, as amended. The Port will be obligated to release any retention in accordance with the Acquiring Party's policies and procedures. [Port staff to consult with each dept. re policy.]

#### 4.5. Priority of Payment Requests.

(a) Numbering and Priority. Developer must number each Payment Request consecutively in the order in which it is submitted to the Port. Except to the extent that **Section 4.4** (Right to Withhold Payment) applies or as provided under the DDA with respect to a Major Breach, the priority of Developer's right to payment under each unsatisfied Payment Request will be in ascending numerical order.

(b) Phase-Specific. Each Payment Request must be limited to Horizontal Development Costs that Developer incurred in a single Phase or to Entitlement Costs incurred before the Project Approval Date. Developer must identify the Phase to which the Payment Request pertains and include Developer's AA Allocation Proposal, which must conform to the applicable Phase Budget.

(c) Port Advances. The Port will have the right in its sole discretion to make a Port Advance of any other source of funds available to the Port at a cost that is less than Developer Return whenever Project Payment Sources are not immediately available. The Port will deduct the amount of any Port Advances of Land Proceeds that were paid by Credit Bid, to the extent not already allocated to an earlier Payment Request, from the amount payable under each Payment Request until the full amount of each Port Advance of Land Proceeds has been allocated.

(d) Public Financing. The Port and Developer acknowledge that Public Financing Sources may be applied to the payment of a Payment Request only to the extent that the Horizontal Development Costs are eligible for payment under Governing Law and Policy, including the limitation on Eligible Return.

(e) No Deadline to Pay. The Port may pay Approved and Deemed Approved Payment Requests: (i) in any number of installments as Project Payment Sources become available; and (ii) irrespective of the length of time that payment is deferred, subject only to limitations on the amount of Project Payment Sources available for the Project.

(f) All Undisputed Amounts Paid. Except as provided in **Section 4.4** (Right to Withhold Payment) or as provided under the DDA with respect to a Major Breach, the Port agrees not to withhold payment on any undisputed portion of a Payment Request.

#### 4.6. Vesting.

(a) Vesting at Approval. Developer's right to payment under a Payment Request will vest when it is approved or deemed approved under **Section 4.2** (Processing Payment Requests). If Project Payment Sources are not available to pay the full amount of a Payment Request at approval, then the Port will pay the Payment Request to the extent funds are available and notify Developer of the amount of the remaining unpaid portion. Developer will have a vested right to the payment of the unsatisfied portion of the Payment Request from Project Payment Sources as they become available.

(b) Order of Payment. Subject to **Section 4.4** (Right to Withhold Payment) or as provided under the DDA with respect to a Major Breach, the Port will pay Payment Requests in ascending order as Project Payment Sources become available. The priority established under this Section will prevail over any conflicting provisions in determining priorities for payments from Project Payment Sources except as provided in the DDA with respect to a Major Breach. This limitation on Project Payment Sources will apply regardless of: (i) the identity of the owner of any property in the Project Site when the Payment Request is paid; (ii) whether the payee under the Payment Request is, at the time of payment, a Party to the DDA; and (iii) whether the DDA has been terminated for reasons other than a Major Breach or assigned to or assumed by another person. This Section will survive termination of this Acquisition Agreement and the DDA. [Will sources be limited by Phases? If so, need to revise]

**4.7. Deposit of Payments.** Except for payments: (a) made to third parties at Developer's direction; and (b) following termination of the DDA for a Major Breach, the Port will tender all payments made under any Approved Payment Request as specified by Developer.

## 5. MISCELLANEOUS.

**5.1. Developer Representations and Warranties.** Developer represents and warrants to and for the benefit of the Port as follows.

(a) Authority to Conduct Business. Developer is a California corporation duly organized and validly existing under the laws of the State of California, is in compliance with the laws of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted.

(b) Authority to Enter Agreement. Developer has the power and authority to enter into this Acquisition Agreement and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by Developer.

(c) Reliance Justified. Developer explicitly agrees that the Port will be entitled to rely on information provided by Developer's representative in or with respect to any Payment Request.

### 5.2. Communications and Notices.

(a) Certain Communications. The following communications 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: (i) a Port request for additional information about a AA Supplement or a Payment Request and Developer's response to the request; (ii) a Port notice of approval or disapproval of a AA Supplement or a Payment Request; (iii) an Inspection Request; and (iv) a Port notice of the insufficiency of Project Payment Sources to pay an Approved Payment Request or Deemed Approved Payment Request in full. Communications covered by this Subsection will be effective upon receipt, or, if delivered after 5 p.m. or on a weekend or holiday, the next business day.

(b) Submittals. Developer must submit proposed AA Supplements and Payment Requests to the Port for review and approval must be in writing and sent by certified first class mail - return receipt requested, personal delivery, or receipted overnight delivery. Payment Requests must be clearly marked: "*Payment Request No. \_\_\_\_\_; Waterfront Site; Attn: Deputy Director, Finance & Administration.*" Communications covered by this Subsection 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 communications covered by this Subsection must be delivered in the same manner as the original.

(c) Notices. All other notices must be given in the manner specified in **App. ¶ A.5** to the addresses for notice provided below, or as changed in accordance with **App. ¶ A.5**.  
[Developer notice addresses to be confirmed or revised.]

Port: Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Telephone: (415) 274-0400

Att'n: Chief Harbor Engineer  
Facsimile:  
Email:

Or

Att'n: Deputy Director, Finance/Admin.  
Facsimile:  
Email:

Or:

Att'n: [Port project manager]  
Facsimile:  
Email:

With a copy to: City Attorney's Office  
Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Att'n: General Counsel  
  
Telephone: (415) 274-0485  
Facsimile: (415) 274-0494  
Email: eileen.malley@sfgov.org

Developer: Forest City Development California, Inc.  
949 Hope Street, Suite 200  
Los Angeles, California 90015  
Attention: Mr. Kevin Ratner  
  
Facsimile: (213) 488-0039  
Email: kevinratner@forestcity.net

With a copy to: Forest City Enterprises, Inc.  
50 Public Square  
1360 Terminal Tower  
Cleveland, Ohio 44113  
Attention: Amanda Seewald, Esq.  
  
Facsimile: (216) 263-6206  
Email: amandaseewald@forestcity.net

(d) Day-to-Day Communications. Developer and the Port agree that day-to-day communications will be directed as follows to: (i) [ ] for Developer; and (ii) [ ], Port Project Manager, (415) 274-xxxx, [ ]@sfport.com, for the Port.

**5.3. Limited Liability of the Port and the City.** Except as otherwise provided in the DDA, Developer agrees that any and all obligations of the Port or the City arising out of or related to this Acquisition Agreement are special and limited obligations of the Port and the City, as applicable, and the Port's obligations to make any payments under this Acquisition Agreement to implement the Financing

Plan are restricted entirely to available Project Payment Sources as provided in the Financing Plan and from no other source. No member of the Board of Supervisors or the Port Commission, or any Port or City official, employee, or agent will incur any liability under this Acquisition Agreement to Developer in their individual capacities by reason of their actions or any Port obligations under this Acquisition Agreement. No officer, director, member, agent, or employee of Developer will be personally liable to the Port or the City in the event of any default or breach of this Acquisition Agreement by Developer. ~~[Delete; Move DDA provisions to Appendix.]~~

**5.4. Relationship to Other Agreements.** Nothing in this Acquisition Agreement may be construed as affecting the Port's, the City's, or Developer's respective rights or obligations under the DDA, including the Financing Plan, the Tax Allocation MOU, and Governing Law and Policy. If this Acquisition Agreement creates ambiguity in relation to or conflicts with any provision of the Financing Plan, the Financing Plan will prevail.

**5.5. Amendment.** This Acquisition Agreement may be amended from time to time as provided in **App. ¶ A.1.4(a)** and otherwise by Approved AA Supplements and Deemed Approved AA Supplements.

[Remainder of page intentionally left blank.]

Executed as of the last date set forth below.

**DEVELOPER:**

**FOREST CITY DEVELOPMENT CALIFORNIA, INC.**, a California corporation

By: \_\_\_\_\_  
Kevin Ratner,  
authorized signatory

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

**PORT:**

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the San Francisco Port Commission

By: \_\_\_\_\_  
Elaine Forbes,  
Interim Executive Director

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

Authorized by:  
Port Resolution No. \_\_\_\_\_  
and Board Resolution No. \_\_\_\_\_

**APPROVED AS TO FORM:**

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Joanne Sakai  
Deputy City Attorney

,

**AA EXHIBIT A**

**Horizontal Improvements to be Acquired**

[To be completed and attached before execution of Acquisition Agreement and amended by AA Supplements from time to time.]

**AA EXHIBIT B**

**Description of Phase Improvements and Components and  
Preliminary Acquisition Price List**

[To be completed for each Phase Application and amended by AA Supplements before horizontal construction begins.]

PHASE: \_\_\_\_\_

**AA EXHIBIT C**

**Form of Payment Request**

PAYMENT REQUEST NO. \_\_\_\_\_

AMOUNT REQUESTED: \$ \_\_\_\_\_

[ ] ENTITLEMENT OR [ ] PHASE: \_\_\_\_\_

To the Chief Harbor Engineer and the Port:

1. I am authorized to execute this Payment Request on behalf of Developer.
2. **[Delete for Horizontal Development Costs.]** This Payment Request No. \_\_\_\_\_ is for the Entitlement Sum.
2. **[Delete for Entitlement Sum.]** The Horizontal Improvements or Components for which payment is requested (described in **AA Exhibit C-1**) were constructed in accordance with the DDA and:
  - [ ] have been inspected and approved for payment as indicated in the attached notice from the Chief Harbor Engineer or
  - [ ] this is a Deemed Approved Payment Request as indicated by the attached proof of delivery to the Chief Harbor Engineer.
3. **[Delete for Entitlement Sum.]** The Acquisition Prices for the Horizontal Improvements or Components for which payment is requested: (a) reflect Horizontal Development Costs that were not incurred more than 90 days after the applicable Acquiring Party found construction to be Finally Complete; (b) have not been inflated in any respect; (c) have not been previously paid; (d) are not the subject of any previously submitted Payment Requests; and (e) have been calculated in conformance with the Acquisition Agreement.
4. The Horizontal Development 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 lien releases.
5. Developer is in compliance with the DDA and the Acquisition Agreement.
6. Neither Developer nor any Vertical Developer Affiliate is: (a) delinquent in the payment of ad valorem real property taxes, possessory interest taxes, Mello-Roos Special Taxes, or special assessments levied on any of the Taxable Parcels it ground leases in the Project Site; or (b) in Material Breach of the DDA.
7. Developer proposes the use of the Project Payment Sources indicated below to satisfy this Payment Request. **[Check each proposed Project Payment Source and insert estimated amount to be used.]**

<b>Proposed Source</b>	<b>Amount Proposed (\$)</b>	<b>Amount Disbursed (\$)</b> <b>[For Port use only]</b>
[ ] Port Advance of Land Proceeds		
[ ] CFD Bond proceeds		
[ ] Special Taxes		
[ ] IFD Bond proceeds		
[ ] Project Tax Increment		
[ ] Other (specify):		

8. Payments under this Payment Request, when approved or deemed approved, are to be made as follows.

The amount of \$ \_\_\_\_\_ to Developer's deposit account at the following financial institution by wire, according to the following instructions: \_\_\_\_\_

The following amounts to any third party listed below at the specified address:

Name	Amount (\$)	Address
------	-------------	---------

10. Other relevant information about Payment Request:

---

---

---

By signing below, I certify that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the best of my knowledge based on reasonable investigation and inquiry.

By: \_\_\_\_\_  
Authorized Representative of  
Forest City Development California, Inc.

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

Attachments:

- Notice of approval
- Unconditional lien releases from: \_\_\_\_\_
- Conditional lien releases from: \_\_\_\_\_
- For Completed Horizontal Improvement: Copy of recorded determination of completeness
- For Completed Horizontal Improvement: Original assignment of warranties and guaranties
- For Completed Horizontal Improvement: As-built drawings of the Horizontal Improvement
- Exhibit C-1
- Exhibit C-2

**NOTICE TO PORT**

Under Section 4.2(c) of the Acquisition Agreement, if you fail to notify Master Developer that this Payment Request is approved or disapproved within 30 days after you determine that this Payment Request is complete, it will be a **Deemed Approved Payment Request**.

Payment Request approved on \_\_\_\_\_

By: \_\_\_\_\_  
Chief Harbor Engineer

AA Exh. C-2



**EXHIBIT C2**

**Horizontal Development Costs & AA Allocation Proposal**

PAYMENT REQUEST NO. \_\_\_\_\_

To be completed for each Horizontal Improvement in this Phase:	
Description of each Component in this Phase:	
Initial estimate of total Horizontal Development Costs of Horizontal Improvement:	
AA Allocation Proposal of Horizontal Development Costs of Horizontal Improvement to each Component:	
AA Allocation Proposal of Horizontal Development Costs applicable to multiple Horizontal Improvements or Phases to each Component of this Horizontal Improvement:	

Port worksheet for payment:	
Horizontal Development Costs supported by attachments to Payment Request:	
<b>Less:</b> Amount to be paid by Port Advance of Land Proceeds paid by Credit Bid	
<b>Less:</b> Holdback for lien releases per § 4.4(a) of the Acquisition Agreement:	
<b>Less:</b> Retention per § 4.4(c) of the Acquisition Agreement:	
Total amount payable under this Payment Request:	

Attachments – Complete Horizontal Improvements Only:

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

AA Exh. C2-1

Payment Request submitted in accordance with Acquisition and Reimbursement Agreement between the City and County of San Francisco, acting by and through the San Francisco Port Commission, and Forest City Development California, Inc., dated for reference purposes only as of [date].