

INTERAGENCY COOPERATION AGREEMENT (TREASURE ISLAND/YERBA BUENA ISLAND)

This INTERAGENCY COOPERATION AGREEMENT (TREASURE ISLAND/YERBA BUENA ISLAND) (as amended from time to time, this “ICA”) dated for reference purposes as of June 28, 2011, (the “**Reference Date**”) is between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county (the “**City**”), and the TREASURE ISLAND DEVELOPMENT AUTHORITY, a non-profit, public benefit corporation (together with any successor public agency, the “**Authority**”), in reference to the Disposition and Development Agreement (Treasure Island/Yerba Buena Island) dated for reference purposes as of June 28, 2011 by and between the Authority and TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC, a California limited liability company (together with its successors, “**Developer**”) (including all attached and incorporated exhibits and as amended from time to time, the “**DDA**”). Capitalized terms used but not otherwise defined in this ICA shall have the meanings for such terms set forth in the DDA and the Development Agreement referenced in Recital A below.

RECITALS

A. In June, 2011, the City, acting through its Board of Supervisors, approved the DDA and a Development Agreement by and between the City and Developer (including all attached and incorporated exhibits and as amended from time to time, the “Development Agreement”). In cooperation with the City, the Authority is in the process of implementing the DDA. The DDA provides for the redevelopment, rehabilitation and revitalization of portions of former Naval Station Treasure Island as more particularly described in the DDA as the “**Project Site**”.

B. The Planning Commission and the Authority certified an environmental impact report for the Project on April 21, 2011, by Planning Commission Motion No. M18325 and Authority Resolution No. 11-14-04/21, and the Board of Supervisors adopted findings and mitigation measures under the California Environmental Quality Act (“**CEQA**”) that must be implemented to reduce the environmental impacts of the Project to less than significant (the “**Mitigation Measures**”) (Board of Supervisors File No. 110328 and Resolution No. 246-11).

C. The DDA provides for Developer to construct and improve Infrastructure and Stormwater Management Controls in accordance with the Infrastructure Plan attached to the DDA, a copy of which is also attached to this ICA as Exhibit A. Developer will construct Infrastructure and Stormwater Management Controls in phases as described in the DDA. In addition, the DDA incorporates the Mitigation Measures that must be implemented at specified stages of development.

D. Design controls governing all Improvements within the Project Site are set forth in the Treasure Island / Yerba Buena Island Special Use District (Planning Code Section 249.52) (the “**SUD**”) and its implementing document, the Design for Development for Treasure Island and Yerba Buena Island (as amended from time to time, the “**Design for Development**”). Design review for Vertical Improvements within the Project Site is governed by the process set forth in the SUD and Design for Development, under which, the Authority has primary responsibility for design review over Vertical Improvements on property within the Project Site

that is subject to the public trust for commerce, navigation and fisheries and the Conversion Act, and the Planning Department has primary responsibility over Vertical Improvements on the remainder of the Project Site.

E. Infrastructure and Stormwater Management Controls development under the DDA is governed by the Design Review and Document Approval Procedure attached to the DDA (the “**DRDAP**”). The DRDAP provides for expedited review and approval of Major Phase Applications and Sub-Phase Applications for the Infrastructure, Stormwater Management Controls and other Improvements (the “**Authority Applications**”). The Parties desire to provide for expedited review by the City Agencies of the Authority Applications and to establish a process for expedited review by the Authority of applications to the City Agencies for the Project, including but not limited to subdivision maps, street improvement permits, site permits, grading permits, and building permits (the “**City Applications**”, together with Authority Applications, the “**Project Applications**”). In accordance with San Francisco Campaign and Governmental Conduct Code section 3.400(b), the City and the Authority find and agree that there is a compelling public policy basis to expedite the review and permitting process for Project Applications as contemplated by this ICA and the DRDAP.

F. As set forth in the TI/YBI Subdivision Code, the Department of Public Works (“**DPW**”) has authority to process subdivision development including but not limited to subdivision mapping, street vacations, public improvement agreements, Infrastructure and Stormwater Management Controls construction permits, determination that the construction of the Infrastructure and Stormwater Management Controls are completed and ready for its intended use, and presentation to the Board of Supervisors for acceptance of the Infrastructure and Stormwater Management Controls. In order to provide for expeditious processing of approvals for Project Applications, DPW may utilize the Task Force, as and to the extent described in Section 3.4 below. DPW also has the ability to provide additional project management, scheduling, engineering, construction management and reimbursement audit services as requested by Authority or Developer.

G. The development of the Project Site shall be completed in accordance with the Development Requirements, as defined in the Development Agreement. Development of the Project in accordance with the Development Requirements affords numerous public benefits for the City and its residents, which include: eliminating blighting influences from and revitalizing the blighted Project Site; implementing geotechnical improvements in developed areas; providing flood protection improvements; constructing substantial new rental and for-sale affordable and market-rate housing; creating publicly accessible open space and new, enhanced public access to the waterfront; and generating new jobs, including employment opportunities for economically disadvantaged individuals.

H. To promote development in accordance with the objectives and purposes of the Development Agreement and DDA, the City and the Authority are entering into this ICA to provide for their cooperation in administering the control and approval of subdivisions, and all other land use, development, construction, improvement, infrastructure, occupancy, and use requirements applicable to the Project.

I. With regard to SFPUC, this ICA is intended to govern SFPUC's role in processing Project Applications. This ICA is in addition to a separate wastewater treatment plant agreement that will be entered into between SFPUC, Authority and Developer, governing the rights and obligations of the SFPUC to acquire, construct and/or operate certain wastewater treatment facilities, recycled water system, and related improvements within the Project Site. The Authority and SFPUC will also be entering into a separate utilities transfer memorandum of understanding that will provide for the SFPUC to continue its activities as a contract provider of utility services during the interim period between the conveyance of the Project Site to the Authority and the installation of new utility infrastructure.

AGREEMENT

ACCORDINGLY, in consideration of the matters described in the foregoing recitals, the covenants contained in this ICA and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and the Authority agree as follows:

1. PURPOSE OF THIS ICA.

1.1 City and Authority. The purpose of this ICA is to facilitate the development of the Project in accordance with the Development Requirements, including this ICA. The City and the Authority agree that: (a) the development of the Project in accordance with the Development Requirements is in the best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws; (b) they intend for this ICA to provide the framework for cooperation between the City and the Authority with respect to the review and approval of Project Applications; and (c) this ICA is for their mutual benefit.

1.2 Developer; Vertical Developer. The City and the Authority agree that: (a) this ICA is for Developer's express benefit, subject to Developer's Consent, which is attached to and is a part of this ICA; (b) except as set forth in Section 7.4, Developer Parties are entitled to rely on, receive benefits conferred by, and enforce this ICA, but only on the condition that neither the Authority nor the City will be liable for any damages under this ICA; and (c) their intention is to provide mechanisms for Developer to develop the Project in accordance with this ICA and the Development Requirements. Developer's burdens and benefits under this ICA and the Developer's Consent, and all limitations on those burdens and benefits, will accrue to the applicable Developer Party. The DDA contemplates partial Transfers and partial terminations of the DDA as well as the sale of Lots to Vertical Developers for development of Vertical Improvements through Vertical DDAs. Developer Parties will have third-party beneficiary rights under this ICA only to the extent it affects or relates to the land on which Developer, the Transferee or Vertical Developer, as applicable, has rights under the DDA or Vertical DDA, as applicable.

2. **EFFECTIVE DATE; TERM.**

2.1 *Effective Date.* This ICA will become effective on the date on which the DDA is effective (the “ICA Effective Date”).

2.2 *Term.* The term of this ICA (the “ICA Term”) begins on the ICA Effective Date and ends, with respect to any portion of the Project Site, on the date that both the DDA and Vertical DDA, if any, terminates with respect to that portion of the Project Site.

2.3 *City.* The City’s approval of this ICA will be evidenced by the signatures of the Mayor, the Clerk of the Board of Supervisors, the Controller, the City Administrator, and the Director of Public Works. Any other City Agency’s approval will be evidenced by its written consent, which will be attached to and be a part of this ICA, but a City Agency’s failure to consent to this ICA will not cause this ICA to be void or voidable. Each City Agency, including the SFMTA, the SFPUC and the San Francisco Fire Department, shall be bound by this ICA only if it approves this ICA and executes the attached consent form evidencing such approval.

3. **COOPERATION.**

3.1 *Agreement to Cooperate.* The City agrees to aid the Authority, and the City and the Authority agree to cooperate with one another, to expeditiously implement the Project in accordance with the Development Requirements and undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Development Requirements are fulfilled during the ICA Term. Nothing in this ICA obligates the City or the Authority to spend any sums of money or incur any costs other than City Costs or Authority Costs that Developer or Vertical Developers must reimburse under the DDA or administrative costs that Developer or Vertical Developers must reimburse through the payment of Administrative Fees.

3.2 *No General Fund Commitment.* This ICA is not intended to, and does not, create any commitment of the City’s General Fund in any manner that would violate the debt limitations under article XVI, section 18 of the State Constitution or the fiscal provisions of the City’s Charter, including Charter section 3.105, or the provisions of Article VIIIA of the City’s Charter.

3.3 *Environmental Review.* This ICA does not limit the City’s or the Authority’s obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project. However, because the Environmental Impact Report (“EIR”) prepared and certified for the Project is both a “project” EIR and a “program” EIR, it is anticipated that the approval of each subsequent application consistent with the Development Requirements shall not require the preparation of new environmental documents, unless otherwise required pursuant to Public Resources Code Section 21166, as the same may be amended from time to time.

3.4 *Expeditious Processing of Approvals.*

(a) Expeditors.

(i) DPW Task Force. Developer, the Authority, and/or the City may retain third-party professionals to assist City and Authority staff with efficiently fulfilling their respective obligations for expeditious processing of permits under this ICA and the DRDAP and DPW obligations under any Acquisition and Reimbursement Agreement. DPW and third party professionals will operate as the DPW Task Force (the “**Task Force**”), provided that (A) any such third-party professional does not pose a conflict between the interests of the Authority or City and Developer with respect to matters involving Developer, or the interests of the Authority or City and Vertical Developer with respect to matters involving Vertical Developer, as evidenced by contractual relationships with Authority, City, Developer or Vertical Developer, either existing or in the immediately prior 24 months, unless a conflict waiver is obtained by the other parties, and (B) at least sixty (60) days before retaining or renewing the contract of any such third-party professional, DPW, Authority, and Developer staff shall meet and confer about the identity, cost, duration and scope of work of such third-party professional to ensure that such third-party professional is used in an efficient manner and avoids redundancies. Any contracts with any such third-party professionals shall provide a maximum annual fee for the specified scope of work; provided, however, that the amount may be modified if the Developer's project phasing exceeds the anticipated scope of work. Any such contracts may be on an annual basis or for such reasonable multi-year term as is agreed-upon by the parties, shall provide for an annual review, and shall provide the City, Authority or other contracting party with at-will cancellation rights. Either Developer or the Authority may request the cancellation of any third-party professional’s contract by delivering a written statement of the basis for its cancellation request to the other Party no less than forty five (45) days after each anniversary of the commencement date of the contract. Upon receipt of a cancellation request, the Parties shall meet and confer to resolve the issues raised in the request, including whether a revised scope of work would address the issues adequately and, if not, whether disbanding the Task Force or implementing procedures for securing a contract with a satisfactory replacement third-party professional is appropriate. In the event that services of the third-party professionals are terminated or the Task Force is disbanded, the Parties shall meet and confer to revise the timelines for Authority and City review of Project Applications under this ICA and the DRDAP in light of available staffing.

(ii) Assessor’s Office. Upon the request of Developer, the Authority and Developer shall meet and confer with the County Assessor regarding the use and retention of dedicated County Assessor staff (on a full or part-time basis) to facilitate the prompt annual assessment of real property in the Project Site. Upon the mutual agreement of Developer, the County Assessor and the Authority regarding the cost, duration and scope of such work to be paid by Developer, the County Assessor shall implement such agreement and make such staff available for property reassessments within the Project Site.

(b) Role of DPW.

(i) Processing of Applications. The City and the Authority agree that, for the Project: (i) DPW will act as the City's lead agency to facilitate coordinated City review of Project Applications for Infrastructure and Stormwater Management Controls (other than mass grading permits and structural components of Infrastructure or Stormwater Management Controls not within public right-of-ways that are permitted by DBI); and (ii) the DPW Task Force will: (x) work with Developer to ensure that Project Applications are technically sufficient and constitute Complete Project Applications, as required under the DRDAP, the Applicable City Regulations, and applicable State and federal law; (y) interface with City and Authority staff responsible for reviewing Project Applications to ensure that City and Authority review of the Project Applications is concurrent and that the approval process is efficient and orderly and avoids redundancies; and (z) take such actions as are required in accordance with any Acquisition and Reimbursement Agreement.

(c) Section 2.4.21 Waiver. Section 2.4.21 of the Public Works Code provides that DPW shall not issue any permit to excavate in any moratorium street. A moratorium street is defined as any block that has been reconstructed, repaved, or resurfaced in the preceding five-year period. The Code allows the DPW Director, in his or her discretion, to grant a waiver for good cause. DPW acknowledges that the development of the Project will involve the construction of an entirely new street network, which will occur prior to the development of adjacent Vertical Improvements. Subsequent Vertical Improvements may require street excavation to connect such Vertical Improvements to newly installed Infrastructure or Stormwater Management Controls. To the extent that the development of subsequent new Vertical Improvements requires excavation within adjoining public streets and such excavation would occur within the five-year moratorium period, it shall be considered good cause for the Director to grant such waiver, subject to reasonable conditions to protect public health, safety and welfare and to allow the Department to recover actual costs incurred on a time and materials basis.

(d) Priority Project. Pursuant to the San Francisco Campaign and Governmental Conduct Code Section 3.400, the City has determined that based on the Project benefits to the City as set forth in the Development Agreement, public policy dictates that this Project can receive priority processing. The City and the Authority agree that the development of the Project as contemplated by the Development Requirements is a priority project for which they will act as expeditiously as is feasible to review and process Complete Project Applications, as more particularly described in the DRDAP and this ICA.

(e) Pre-Submission of Applications. The Authority, with the Task Force's assistance, will advise applicable City Agencies of, and invite them to participate in, any pre-submission conference for an Authority Application. The Authority will require Developer to provide any City Agencies choosing to participate in any pre-submission conference with a copy of Developer's submission in accordance with the DRDAP.

(f) City and Authority Review of Authority Applications. As set forth in the DRDAP, the Authority, in consultation with other City Agencies as appropriate, will review and consider Authority Applications to determine whether such Authority Applications are Complete Applications and for consistency with the Development Requirements, subject to the following:

(i) City Agencies. The Authority will submit each Complete Authority Application, or applicable portions thereof, to applicable City Agencies. Each City Agency will review submittals made to them under this ICA for consistency with the Applicable City Regulations and applicable State and federal law, and will make recommendations to the Authority within thirty (30) days of the City Agency's receipt of such Complete Authority Application in accordance with the DRDAP. The City Agencies will not make recommendations or impose requirements that are inconsistent with the Development Requirements, including Applicable City Regulations, or applicable State and federal law, and will not deny an Approval of any Authority Application based on items that are consistent with the Development Requirements, including Applicable City Regulations and applicable State and federal law. Any City Agency denial, or recommendation of denial to the Authority, of an Approval shall include a statement of the reasons for such denial or recommendation of denial to the Authority.

(ii) SFMTA.

(1) Before the Authority Approves any Authority Application that includes or should include (1) future Infrastructure that will be under SFMTA jurisdiction upon City acceptance as defined in Section 8.12 of the Infrastructure Plan, which shall not include Infrastructure for on-street parking such as curb and parking lane paint, parking meters, and parking signs (the "**SFMTA Infrastructure**") or (2) Mitigation Measure M-TR-2 Expanded Transit Service and certain other transportation-related Mitigation Measures, the implementation of which will be within SFMTA jurisdiction (the "**Transportation-Related Mitigation Measures**"), the Authority shall submit each such Complete Authority Application to the SFMTA for review and comment to ensure that SFMTA requirements are satisfied, including any requirements for start-up testing protocols and warranties, subject to Article 2 of the Development Agreement regarding Applicable Laws. The SFMTA will review each such Complete Authority Application, or applicable portions thereof, and provide comments to the Authority within thirty (30) days of the SFMTA's receipt of such Complete Authority Application. In addition, the Authority, Developer, and Vertical Developers, as applicable, will work collaboratively with the SFMTA to ensure that SFMTA Infrastructure and Transportation-Related Mitigation Measures are discussed as early in the review process as possible and that the Authority and the SFMTA act in concert with respect to these matters. The Authority shall not Approve any Authority Application that includes plans and specifications for SFMTA Infrastructure or that amends the Transportation-Related Mitigation Measures, including Mitigation Measure M-TR-2, without the prior Approval of the SFMTA Executive Director, or his or her designee.

(2) AB 981 (Chapter 317, Stats. Of 2008) requires the Treasure Island Transportation Management Agency (“TITMA”), in implementing the transportation program, to coordinate with SFMTA in decisions regarding transit service, parking enforcement, traffic signaling, and all other operational responsibilities for which SFMTA agrees to take operational responsibilities, as will be provided in a memorandum of understanding between SFMTA and TITMA. SFMTA and TITMA will work cooperatively to pursue the implementation of the Expanded Transit Service plan as described in the Mitigation Measures. However, because funding for all of the additional transit service contemplated may be subject to future appropriations, this ICA does not obligate SFMTA to provide Expanded Transit Service. In addition, SFMTA shall advise and consult with TITMA on general transportation policy and management practices that include and address safety, transit and vehicle circulation efficiency, pedestrian and bicycle network development and modifications, and parking management and pricing.

(3) SFMTA shall assist TITMA in identifying adequate and reliable funding sources as necessary for the implementation of the Transportation Plan and Mitigation Measures. Such assistance may include operation of the on-Island shuttle by SFMTA to the extent that terms for operation and funding are mutually agreed to by SFMTA and TITMA. This provision is not intended to interfere with the jurisdiction of SFMTA or any successor agency over the real, personal, and financial assets of SFMTA, the authority of SFMTA over contracting, leasing, and purchasing, or the authority of SFMTA to set fares for the San Francisco Municipal Railway.

(iii) SFPUC.

(1) Before the Authority approves any Authority Application, including but not limited to the Streetscape Master Plan and Conceptual Parks and Open Space Master Plan Applications, that includes or should include (1) future Infrastructure that will be under SFPUC jurisdiction upon City acceptance (the “SFPUC Infrastructure”), or (2) certain utility-related Mitigation Measures, the implementation of which will be within SFPUC jurisdiction (the “SFPUC-Related Mitigation Measures”), or (3) Stormwater Management Controls, the Authority shall submit each such Complete Authority Application to the SFPUC for review and comment to ensure that SFPUC requirements are satisfied, including any requirements for start-up testing protocols and warranties, subject to Article 2 of the Development Agreement regarding Applicable Laws. The SFPUC will review each such Complete Authority Application, or applicable portions thereof, and provide comments to the Authority within thirty (30) days of the SFPUC’s receipt of such Complete Authority Application. In addition, the Authority, Developer, and Vertical Developers, as applicable, will work collaboratively with the SFPUC to ensure that SFPUC Infrastructure, Stormwater Management Controls, and SFPUC-Related Mitigation Measures are discussed as early in the review process as possible and that the Authority and the SFPUC act in concert with respect to these matters. The Authority shall not Approve any Authority Application that includes plans and specifications for SFPUC

Infrastructure, Stormwater Management Controls, or that amends the SFPUC Infrastructure or SFPUC-Related Mitigation Measures without the prior Approval of the SFPUC. No Street Improvement Permit shall be issued without the SFPUC reviewing and approving the plans for compliance with the applicable stormwater and other Infrastructure requirements.

(2) Section I of the ICA, sections 6.2 and 7.10 of the DDA, and the Infrastructure Plan contemplate further negotiations between the Authority and the City, acting through the SFPUC, regarding the financing, construction, operation and maintenance of new wastewater and recycled water treatment facilities; the continuation of SFPUC activities as a contract provider of utility services during the interim period between the conveyance of the Project Site to the Authority and the installation of new utility infrastructure; and the construction of, or reimbursement of Caltrans for, the infrastructure relating to the emergency water supply for the Project. SFPUC approval of and consent to the Development Agreement and ICA shall not affect the outcome of the future negotiations described above. The SFPUC retains full discretion to negotiate the elements of the wastewater/recycled water project, interim operations agreements, and emergency water supply facilities agreements.

(iv) SFFD. Before the Authority approves any Authority Application that includes or should include future Infrastructure that will be under SFFD jurisdiction upon City acceptance (the “**SFFD Infrastructure**”), the Authority shall submit each such Complete Authority Application to the SFFD for review and comment to ensure that SFFD requirements are satisfied, including any requirements for start-up testing protocols and warranties, subject to Article 2 of the Development Agreement regarding Applicable Law. The SFFD will review each such Complete Authority Application, or applicable portions thereof, and provide comments to the Authority within thirty (30) days of SFFD’s receipt of such Complete Authority Application. In addition, the Authority, Developer, and Vertical Developers, as applicable, will work collaboratively with the SFFD to ensure that SFFD Infrastructure is discussed as early in the review process as possible and that the Authority and the SFFD act in concert with respect to these matters. The Authority shall not Approve any Authority Application that includes plans and specifications for SFFD Infrastructure without the prior Approval of the SFFD.

3.5 City’s Cost Recovery for the Task Force, Assessor and other City Agency Costs. The Parties agree that all of the City’s costs of the Task Force, the agreed costs of the County Assessor as set forth in Section 3.4(a)(ii), and the costs of other City Agencies, will be City Costs, to be reimbursed by Developer, all subject to the limitations set forth in the DDA, the Development Agreement and this ICA. Each City Agency shall submit to the Authority quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement; provided, for subdivision, mapping and Infrastructure review matters coordinated by DPW, applicable City Agencies shall submit their invoices to DPW and DPW shall combine those invoices with DPW costs to submit one combined invoice for reimbursement. The Authority shall gather all such invoices so as to submit one combined City bill to Developer each quarter. Any City Costs incurred

by the City shall be invoiced to the Authority within six (6) months of the date the City Cost is incurred. To the extent that a City Agency fails to submit such invoices, then the Authority or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable. The Authority shall submit all invoiced City Costs to Developer in accordance with the DDA, and within sixty (60) days of receipt of funds from Developer or Vertical Developers for such invoices, the Authority shall forward such invoiced amounts to the applicable City Agency.

3.6 *Specific Actions by the City.* City actions and proceedings subject to this ICA shall be through the Mayor or his or her designee, as well as affected City Agencies, and shall include:

(a) Trust Exchanges. Assisting the Authority in closing the Trust Exchanges as contemplated by the Public Trust Exchange Agreement.

(b) Street Vacation, Dedication, Acceptance, and other Street Related Actions. Instituting and completing proceedings for opening, closing, vacating, widening, or changing the grades of streets, roads, alleys, sidewalks, and other public right-of-ways and for other necessary modifications of the streets, the street layout, and other public right-of-ways in the Project Site, including any requirement to abandon, remove, and relocate public utilities (and, when applicable, city utilities) within the public right-of-ways as necessary to carry out the Project in accordance the Development Requirements.

(c) Cooperation. Assisting the Authority as set forth in this ICA and in any memoranda of understanding or other agreements among the City Agencies or between the City and the Authority in furtherance of this ICA and the Project.

(d) Acquisition. Expeditiously acquiring land and Infrastructure or other Improvements from Developer, the Authority or any Community Facilities District (or similar financing device) by accepting Developer's dedication of property and Infrastructure and Improvements that have been constructed to City standards in accordance with the DDA and any Acquisition and Reimbursement Agreement, and taking any additional City actions as required under any Acquisition and Reimbursement Agreement.

(e) Release of Security. Releasing security as expeditiously as possible following the Completion of Infrastructure, but in no event before the applicable date for release under the Map Act and the TI/YBI Subdivision Code and as may be further specified in any Subdivision Improvement Agreement.

(f) State and Federal Assistance. Assisting the Authority in pursuing, and reasonably considering requests from Developer to pursue, state or federal grants on behalf of the Project, below market rate loans or other financial assistance or funding to assist in paying for environmental remediation of the Project Site, transportation and other Infrastructure improvements, and other community benefits. The City shall make

any Project Grant obtained by the City for the Project available to the Authority for use in accordance with the Financing Plan.

(g) Environmental Review. Complying with and implementing Mitigation Measures for which the City is responsible, whether as the municipal corporation or as a landowner, and assisting with evaluating and performing any subsequent environmental review to the extent required under CEQA Guidelines Section 15162.

(h) Affordable Housing Tax Credits. Using its good faith efforts to prioritize any application for 9% Tax Credits under the City's geographic apportionment, to the extent the applicants fail to secure an allocation of 9% Tax Credits from a state-wide set-aside. Priority within the geographic apportionment will be given first to TIHDI Housing Projects and then to other Authority Housing Projects.

(i) Historic Tax Credits. Using its good faith efforts to assist Developer in pursuing the 20% Historic Tax Credit and such other historic tax incentives as may be available to encourage the rehabilitation of the historic resources on the Project Site.

(j) Project Management, Scheduling, Engineering, Construction Management and Reimbursement Audit Services. Upon request of the Authority and subject to Developer's consent, DPW assisting with project management, scheduling, engineering, construction management and reimbursement audit services.

3.7 Public Power. The Authority shall, in consultation with the SFPUC, have caused the Developer to prepare an assessment of the feasibility of the SFPUC providing electric service to the Project Site consistent with San Francisco Administrative Code Chapter 99. In addition, the Authority shall, in consultation with the SFPUC, have caused the Developer to prepare an assessment of the feasibility of the SFPUC providing gas service to the Project Site. Prior to the Authority's approval of the first Major Phase Application, the Authority shall have caused the Developer to complete the feasibility studies in consultation with the SFPUC. The Developer shall pay for all costs of such studies. Upon completion of the feasibility study, the SFPUC, at its sole discretion, may determine whether it will provide electric service or gas service, or both to the Project Site. Notwithstanding the foregoing, subject to the agreement of the SFPUC to provide electricity and/or natural gas service following completion of these studies, Developer understands and agrees that all electricity and/or natural gas for the Project Site (the "applicable service") will be provided by Hetch Hetchy Water and Power or other City sources, so long as the updated feasibility analysis shows that: (i) the applicable service will be reasonably available for the Project's needs, (ii) the level of reliability and customer service responsiveness will be substantially equivalent or better than that otherwise available, (iii) upon application for the applicable service, the applicable service can be separately metered and implemented at comparable business terms and schedule (including delivery of service to construction sites), (iv) the projected price for the applicable service is comparable to or less than the prevailing market rates in San Francisco for comparable types of loads, and (v) the capital refund structure for the

applicable service, (including allowances, cost of ownership, special facilities, and income tax component of construction) is at comparable business terms.

3.8 *Procedures Required Under Applicable Laws.* All City actions under this ICA will be taken subject to the limitations in the Development Agreement.

4. BUILDING PERMITS/CITY APPLICATIONS.

4.1 *Processing of Building Permits.* Any application for a building permit that Developer submits for construction of the Project during the ICA Term must be consistent with the Development Requirements, including Applicable City Regulations at the time of the building permit application.

(a) Authority and City Review of City Applications. Within five (5) days of its determination that a City Application is a Complete Application, City staff shall submit a copy of such Complete City Application to the Authority. Within thirty (30) days of its receipt of a Complete City Application, the Authority will review such City Application and advise the City if the City Application complies and is consistent with the applicable Development Requirements. No City Application will be approved and no City permit will be issued until the Authority has made a favorable compliance and consistency determination. The City shall not deny a City Application to the extent that the City Application is based on an item or element that is required by and consistent with the Development Requirements. The City shall review and approve, conditionally approve, or deny each City Application in accordance with the Applicable City Regulations and applicable State and federal law, including the Permit Streamlining Act (Cal. Gov't Code §§ 65920 et seq.), subject to the Development Agreement regarding Applicable Laws.

(b) Authority. The Authority will review and approve each Construction Document Application for consistency with the Development Requirements before the permit is issued.

5. PERMITS TO ENTER ON CITY PROPERTY.

5.1 *Permits Generally.* Subject to the rights of any third party and the City's reasonable agreement on the scope of the proposed work, the City will grant permits to enter on commercially reasonable terms in order to permit Developer to enter onto, investigate, undertake environmental response programs, construct Infrastructure, Stormwater Management Controls or other Improvements upon, or otherwise use property owned by the City in furtherance of the implementation of the Plan Documents and Project Documents. Permits will include indemnification and security provisions in keeping with the City's standard practices. Permits to enter will include permits as required to undertake Mitigation Measures in accordance with the Development Requirements, and permits to enter to construct Infrastructure and Stormwater Management Controls on, in, or under any street or other right-of-way or land owned by the City, in accordance with the Infrastructure Plan and the other Project Documents.

6. OTHER GOVERNMENTAL AUTHORIZATIONS.

6.1 *Cooperation by the City; Permit Conditions.*

(a) Cooperation to Obtain Permits. Subject to this ICA and the Mitigation Measures, the City will cooperate with the Authority and with reasonable requests by Developer to obtain permits, agreements, or entitlements from any State, federal, regional, or local agency (excluding the Authority or any City Agency) having or claiming jurisdiction over all or portions of the Project Site or aspects of its development (an “**Other Regulatory Approval**”), as may be necessary or desirable to effectuate and implement development of the Project in accordance with the Plan Documents and Project Documents. The City’s commitment to Developer under this ICA is subject to the following conditions:

(i) Throughout the permit process for any Other Regulatory Approval, Developer will consult and coordinate with the affected City Agency in Developer’s efforts to obtain the permit, and the City will cooperate reasonably with Developer and, if applicable, the Authority, in Developer’s efforts to obtain the permit.

(ii) Developer may not agree to conditions or restrictions to any Other Regulatory Approval that could create: (1) any obligations on the part of any City Agency that is required to be a co-applicant or co-permittee, unless the obligation is specifically the City’s responsibility under this ICA, the Project Documents, or the City Approvals; or (2) any restrictions on City property, unless in each instance the affected City Agency has previously approved the conditions or restrictions in writing and in its reasonable discretion.

(b) Costs. Developer will bear all costs associated with applying for and obtaining any necessary Other Regulatory Approval. Developer, at no cost to the City that is not a City Cost, will be solely responsible for complying with any and all conditions or restrictions imposed as part of an Other Regulatory Approval for the construction of the Improvements, whether the conditions are on the site of a Major Phase, Sub-Phase, or Lot. Developer will not be responsible for complying with conditions or restrictions required for Vertical Improvements within the Affordable Housing Lots, except for Developer’s obligations (i) under the Infrastructure Plan and the Housing Plan, and (ii) to obtain any Other Regulatory Approvals with respect to Mitigation Measures for which it is responsible under the DDA and which have not been assumed by the developer of the applicable Affordable Housing Lot. Developer will have the right to appeal or contest any condition in any manner permitted by law imposed under any Other Regulatory Approval, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee. If Developer can demonstrate to the City’s reasonable satisfaction that an appeal would not affect the City’s responsibility or liability for any conditions that are or could be the responsibility of any City Agency under the Other Regulatory Approval, the City will not unreasonably withhold or delay its consent. In all other cases, the affected City Agencies will have the right to give or withhold their consent in their sole and absolute discretion. Developer

must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Other Regulatory Approval.

(c) Continuing City Obligations. Certain Other Regulatory Approvals may include conditions that entail maintenance by or other obligations of the permittee or co-permittees that continue after the City accepts the dedication of completed Infrastructure. Upon the City's acceptance of any Infrastructure that has continuing obligations under an Other Regulatory Approval, at Developer's request, the City will take reasonably necessary steps to remove Developer as the named permittee or co-permittee from the Other Regulatory Approval if either: (i) the continuing obligations are designated as the City's responsibility under this ICA, the Project Documents, or related City Approvals; or (ii) the City otherwise has agreed, in its sole discretion, to accept sole responsibility for the conditions in accordance with this Subsection (c).

7. REMEDIES.

7.1 *General*.

(a) Notice of Default. If any Party defaults in the performance of this ICA (each an "**ICA Default**"), the non-defaulting Party may deliver a written notice of default to the other. The notice of default must state with reasonable specificity the nature of the alleged ICA Default, the provision(s) under which the ICA Default is claimed to arise, and the manner in which the ICA Default may be cured.

(b) Meet and Confer. After notice of an ICA Default is delivered, the City and the Authority, together with the applicable Developer Party, will meet promptly to discuss the ICA Default and the manner in which the defaulting Party can cure the same so as to satisfy the noticing Party's concerns. The City, the Authority, and the Developer Party will continue meeting regularly, discussing, investigating, and considering alternatives for up to sixty (60) days from the delivery of the notice of an ICA Default. After the sixty (60) day meet and confer period, if the noticing Party no longer holds the view that the other Party is in default, the noticing Party will rescind the notice of an ICA Default.

(c) Cure. No later than the end of the sixty (60) day meet and confer period, the defaulting Party must begin to cure the noticed ICA Default, and proceed diligently to cure the ICA Default. If: (i) the defaulting Party does not commence within sixty (60) days after the end of the meet and confer period and diligently pursue a cure, or the ICA Default is not cured within a reasonable time, not to exceed sixty (60) days after the end of the sixty (60) day meet and confer period; or (ii) the defaulting Party refuses to meet and confer regarding the noticed ICA Default, then, subject to Section 7.2, the noticing Party or any affected Developer Party may institute proceedings to obtain a cure and remedy for the ICA Default, including proceedings to compel specific performance by the defaulting Party. Nothing in this Section 7.1(c) requires a Party to postpone instituting any injunctive proceeding if it believes in good faith that postponement will cause it irreparable harm. The Parties acknowledge that termination of this ICA is a

remedy only if the DDA and Development Agreement terminate, as further provided in this ICA.

(d) Developer's Legal Rights. Subject to Section 7.2, nothing in this ICA limits the Developer Party's rights or remedies under any applicable law governing the application, review, processing, or permitting of Improvements, including the Permit Streamlining Act (Cal. Gov't Code §§ 65920 *et seq.*).

7.2 No Monetary Damages. The Parties have determined that monetary damages are inappropriate and that it would be extremely difficult and impractical to fix or determine the actual damages to a Party as a result of an ICA Default and that equitable remedies, including specific performance but not including damages, are the appropriate remedies for enforcement of this ICA. The Parties would not have entered into this ICA if either of them were liable to the other or to any Developer Party for damages under or with respect to this ICA. Consequently, the Parties have agreed that neither Party will be liable in damages to the other, or to any Developer Party, and each Party and Developer Party covenants not to sue for or claim any damages and expressly waives its right to do so: (a) for any ICA Default; or (b) arising from or connected with any dispute, controversy, or issue regarding the application, interpretation, or effect of this ICA.

7.3 Attorneys' Fees. In the event of any dispute or any legal action or other dispute resolution mechanism to enforce or interpret any provision of this ICA, each Party will bear its own attorneys' fees, whether or not one Party prevails.

7.4 Developer Default. If a Developer Party commits an Event of Default of its obligations under the applicable DDA or Vertical DDA, including failure to pay City Costs or Authority Costs (following expiration of any notice and cure periods), any City or Authority obligations under this ICA with respect to the defaulting Developer Party will be suspended and will not be reinstated unless and until the Developer Party cures the Event of Default. For purposes of this ICA, an Event of Default under the DDA will not relieve the City or Authority of any obligation under this ICA that arose before the Event of Default (except with respect to terminated portions of the DDA), or that relates to its obligations under any DDA or Vertical DDA with any non-defaulting Developer Party. This Section 7.4 does not limit any other Authority rights or remedies under the DDA, or any other City rights or remedies under the Development Agreement, Applicable Regulations or applicable State or federal laws.

8. GENERAL PROVISIONS.

8.1 Notices. Any notice or other communication given under this ICA by a Party must be given or delivered (i) by hand, (ii) by registered or certified mail, postage prepaid and return receipt requested, or (iii) by a recognized overnight carrier, such as Federal Express, in any case addressed as follows:

8.2 Calendar Days. All review periods specified in this ICA shall refer to calendar days and not business days unless expressly stated otherwise.

To the Authority:

Treasure Island Development Authority
One Avenue of the Palms, 2nd Floor
San Francisco, CA 94130
Attn: Executive Director

With a copy to:

Office of Economic and Workforce Development
City and County of San Francisco
City Hall, Rm. 448
1 Dr. Carlton B. Goodlett Place, Fourth Floor
San Francisco, California 94102
Attn: Director
Re: TI/YBI ICA

With a copy to:

Office of the Controller
City and County of San Francisco
875 Stevenson Street, Room 235
San Francisco, California 94103
Attn: Controller
Re: TI/YBI ICA

And to:

Department of Public Works
30 Van Ness Avenue, Suite 4200
San Francisco, California 94102
Attn: Director
Re: TI/YBI ICA

And to:

Office of the City Attorney
City Hall
1 Dr. Carlton B. Goodlett Place, Room 232
San Francisco, California 94102
Attn: Real Estate/Finance
Re: TI/YBI ICA

And copies of all notices to:

Treasure Island Community Development, LLC
c/o UST Lennar HW Scala SF Joint Venture
One California Street, Suite 2700
San Francisco, CA 94111
Attn: Kofi Bonner

And to:

Gibson Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Attn: Mary G. Murphy

Every notice given to a Party under this ICA must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this ICA under which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond;
- (c) if appropriate, “Request for Approval under the Interagency Cooperation Agreement”; and
- (d) the specific reasons for disapproval or objection, if the notice conveys disapproval or an objection for which reasonableness is required.

Any mailing address may be changed at any time by giving written notice of the change in the manner provided above at least ten (10) days before the effective date of the change. All notices under this ICA will be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

8.3 Calendar Days. All review periods specified in this ICA shall refer to calendar days and not business days unless expressly stated otherwise.

8.4 Amendments.

(a) Except as otherwise provided in this ICA, this ICA may be amended or modified only by a written instrument executed by the City and the Authority, with the written consent of Developer Representative, which may not be unreasonably withheld, conditioned, or delayed. The Mayor and the Director of Public Works (or any successor City officer as designated by law) are authorized to consent to any amendment to this ICA after consultation with the directors or general managers of any affected City Agencies unless the amendment would increase the risk of a negative impact on the City’s General Fund, as determined by the Controller; provided, the Mayor cannot make any amendment (i) that affects the SFMTA Infrastructure or the SFMTA-Related Mitigation Measures without the prior approval of the SFMTA, (ii) that affects the SFPUC Infrastructure, Stormwater Management Controls, or the SFPUC-Related Mitigation Measures without the prior approval of the SFPUC, (iii) and that affects the SFFD Infrastructure without the prior approval of the SFFD.

(b) The Authority agrees not to make any material modification to the Infrastructure Plan or the DRDAP in a manner that increases any obligations of or lessens the primary benefits accruing to the City, without obtaining the City's prior written consent, which will not be unreasonably withheld. Subject to the limitations set forth in Section 8.4(a) above for required approvals of the SFMTA, the SFPUC, and the SFFD, any determination of materiality under this Section 8.4(b) shall be made by the Mayor, and any consent of the City under this Section 8.4(b) shall be given by the Mayor and any affected City Agency.

8.5 *Invalidity.*

(a) Invalid Provision. If a final court order finds any provision of this ICA invalid or inapplicable to any Person or circumstance, then the invalid or inapplicable provision will not affect any other provision of this ICA or its application to any other Person or circumstance, and the remaining portions of this ICA will continue in full force and effect.

(b) Countervailing Law. If any applicable State or federal law prevents or precludes compliance with any material provision of this ICA, the Parties agree to modify, amend, or suspend this ICA to the extent necessary to comply with law in a manner that preserves to the greatest extent possible the intended benefits of this ICA to each of the Parties and to Developer.

(c) Right to Terminate. Either Party may terminate this ICA upon written notice to the other Party if this ICA as amended, modified, or suspended under Subsection (a) or (b) would: (i) be unreasonable or grossly inequitable under all of the circumstances or would frustrate its fundamental purposes; or (ii) deprive the City or the Authority of the substantial benefits derived from this ICA or make performance unreasonably difficult or expensive. Following termination, neither Party nor Developer will have any further rights or obligations under this ICA.

8.6 *Non-Waiver.* A Party's (or Developer's) delay or failure to exercise any right under this ICA may not be deemed a waiver of that or any other right contained in this ICA.

8.7 *Successors and Assigns; Third Party Beneficiary.* This ICA inures to the benefit of and binds the City's and the Authority's respective successors and assigns. Developer (and its Transferees) and Vertical Developers are intended third party beneficiaries of this ICA. Except for Developer (and its Transferees) and Vertical Developers, this ICA is for the exclusive benefit of the Parties and not for the benefit of any other Person and may not be deemed to have conferred any rights, express or implied, upon any other Person.

8.8 *Consents by Developer Representative.* Any Developer approvals or consents required under this ICA will be given by the Developer Representative. The attached Developer's Consent is incorporated in this ICA by this reference.

8.9 Governing Law. This ICA is governed by and must be construed in accordance with the laws of the State of California.

8.10 Counterparts. This ICA may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

8.11 Interpretation of Agreement.

(a) Exhibit. Whenever an “**Exhibit**” is referenced, it means an attachment to this ICA unless otherwise specifically identified. The following Exhibit is attached to this ICA for reference purposes only:

EXHIBIT A Infrastructure Plan

(b) Captions. Whenever an Article, a Section, a Subsection, or paragraph is referenced in this ICA, it refers to an Article, a Section, a Subsection, or a paragraph of this ICA unless otherwise specifically identified. The captions preceding the Articles and Sections of this ICA have been inserted for convenience of reference only and do not define or limit the scope or intent of any provision of this ICA.

(c) Words of Inclusion. The words “including”, “such as” or words of similar import when following any general term may not be construed to limit the general term to the specific terms that follow, whether or not language of non-limitation is used in the reference. Rather, these terms will be deemed to refer to all other terms that could reasonably fall within the broadest possible scope of the term.

(d) References. Wherever reference is made to any provision, term or matter “in this ICA”, “herein” or “hereof” or words of similar import, the reference will be deemed to refer to any and all provisions of this ICA reasonably related to the provision, term or matter in the context of the reference, unless the reference refers solely to a specific numbered or lettered Section, paragraph, or subdivision of this ICA.

(e) Recitals. If the recitals conflict or are inconsistent with any of the remaining provisions of this ICA, the remaining provisions of this ICA will prevail.

8.12 Entire Agreement. This ICA (including the Developer’s Consent and all Exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter of this ICA. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this ICA. No prior drafts of this ICA or changes from those drafts to the executed version of this ICA may be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other Person, and no court or other body may consider those drafts in interpreting this ICA.

8.13 Further Assurances. The Authority and the City each agree to take all actions and do all things, and execute, with acknowledgment or affidavit if required, any

and all documents that may be necessary or appropriate to achieve the purposes of this ICA.

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

“**Acquisition and Reimbursement Agreement**” is defined in the Financing Plan.

“**Administrative Fee**” is defined in the Development Agreement.

“**Applicable City Regulations**” is defined in the Development Agreement.

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

“**Authority Applications**” is defined in Recital E.

“**Board of Supervisors**” is defined in Recital A.

“**Project Site**” is defined in Recital A.

“**CEQA**” is defined in Recital B.

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

“**City Agency**” or “**City Agencies**” means, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this ICA and that have subdivision or other permit, entitlement or approval authority or jurisdiction over any Major Phase, Sub-Phase, or individual Lot in any part of the Project Site, including the City Administrator, DPW, SFMTA, and SFFD, together with any successor City agency, department, board, commission, or bureau.

“**City Applications**” is defined in Recital E.

“**City Approval**” means any approval by a City Agency of a City Application relating to the Project.

“**City Costs**” means the actual and reasonable costs incurred by a City Agency in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in Section 2.c of the Developer's Consent attached to this ICA, but excluding work and fees covered by Administrative Fees.

“**Complete Application**” is defined in the DRDAP.

“**TI/YBI Subdivision Code**” is the Treasure Island and Yerba Buena Island Subdivision Code of the City.

“**DBI**” means the City's Department of Building Inspection.

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

“**Design for Development**” is defined in Recital D.

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

“**Developer’s Consent**” means the Developer’s Consent to ICA and Agreement attached to this ICA.

“**Developer Party**” is defined in the Developer’s Consent to ICA and Owner’s

“**DPW**” is defined in Recital F.

“**DRDAP**” is defined in Recital D.

“**Development Fees and Exactions**” is defined in the Development Agreement.

“**Development Requirements**” means the Project Approvals and the Transaction Documents, as defined in the Development Agreement.

“**Exhibit**” is defined in Section 8.11(a).

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

“**ICA Default**” is defined in Section 7.1(a).

“**ICA Effective Date**” is defined in Section 2.1.

“**ICA Term**” is defined in Section 2.2.

“**Indemnified City Parties**” is defined in the Developer’s Consent.

“**Indemnify**” means indemnify, defend, reimburse, and hold harmless.

“**Losses**” is defined in the Developer’s Consent.

“**Map Act**” means the California Subdivision Map Act (California Government Code Section 66410 *et seq.*).

“**Mitigation Measures**” is defined in Recital B.

“**Other Regulatory Approval**” is defined in Section 6.1.

“**Parties**” or “**Party**” means the Authority or the City, or both, as the context requires.

“**Plan Documents**” means the City’s General Plan, and its implementing documents, including without limitation, the Treasure Island and Yerba Buena Island Special Use District and Design for Development.

“Project Applications” is defined in Recital E.

“Project Documents” means the Development Agreement, the DDA, and their respective implementing documents, including without limitation, the Infrastructure Plan, Design Review and Document Approval Procedure, this Interagency Cooperation Agreement and Vertical DDAs.

“Reference Date” is defined in the introductory paragraph.

“SFFD” means the Fire Department of the City and County of San Francisco.

“SFFD Consent” means SFFD’s Consent to Infrastructure Plan and ICA attached to this ICA.

“SFFD Infrastructure” is defined in Section 3.4(f)(iv).

“SFMTA” means the Board of Directors of the Municipal Transportation Agency of the City and County of San Francisco.

“SFMTA Consent” means SFMTA’s Consent to Infrastructure Plan and ICA attached to this ICA.

“SFMTA Infrastructure” is defined in Section 3.4(e)(ii).

“SFPUC” means the Public Utilities Commission of the City and County of San Francisco.

“SFPUC Consent” means SFPUC’s Consent to Infrastructure Plan and ICA attached to this ICA.

“SFPUC Infrastructure” is defined in Section 3.4(e)(iii).

“SFPUC-Related Mitigation Measures” is defined in Section 3.4(e)(iii)(1).

“Stormwater Management Controls” is defined in the DDA.

“DPW Task Force” is defined in Section 3.4(a)(i).

“Transportation-Related Mitigation Measures” is defined in Section 3.4(e)(ii).

“Vertical DDA” means a Vertical Disposition and Development Agreement entered into between Authority and a Vertical Developer, and includes any Vertical LDDA.

“Vertical LDDA” means a Vertical Lease Disposition and Development Agreement entered into between Authority and a Vertical Developer.

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June 28, 2011

This ICA was executed and delivered as of the Reference Date.

CITY AND COUNTY OF SAN FRANCISCO

By _____
Edwin M. Lee, Mayor

By _____
Angela Calvillo,
Clerk of the Board of Supervisors

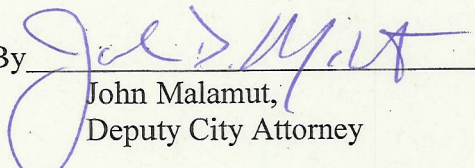
By _____
Ben Rosenfield, Controller

By _____
Amy L. Brown, Acting City
Administrator

By _____
Ed Reiskin, Director of Public Works

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

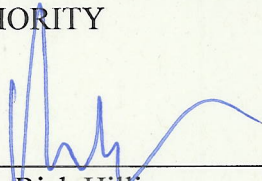
By  _____
John Malamut,
Deputy City Attorney

Resolution No. 241-11

June 28, 2011

TREASURE ISLAND DEVELOPMENT
AUTHORITY

By

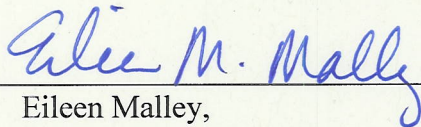


Rich Hillis

Treasure Island Project Director

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By



Eileen Malley,
Deputy City Attorney

Authority Resolution No. 11-24-04/27

DEVELOPER'S CONSENT TO ICA AND AGREEMENT

By signing below, Developer, on behalf of itself, its Transferees, and all Vertical Developers, each in their capacity under an applicable DDA or Vertical DDA (each, a **"Developer Party"**), acknowledges that the Developer Parties are intended third-party beneficiaries of the Interagency Cooperation Agreement (Treasure Island/Yerba Buena Island) dated for reference purposes as of June 28, 2011 (the **"ICA"**), to which this Developer's Consent to ICA and Agreement (this **"Developer's Consent"**) is attached and incorporated. Capitalized terms used but not otherwise defined in this Developer's Consent shall have the meanings for such terms set forth in the ICA. By recording the DDA and the ICA, the Parties acknowledge and agree that the ICA and this Developer's Consent shall apply to, and burden and benefit, the Authority and the Developer Parties whether or not this ICA or Developer's Consent is specifically referenced in any Assignment and Assumption Agreement.

1. **Consent and Agreement.** On behalf of the Developer Parties, Developer (i) consents to the ICA, understanding that the City and the Authority have entered into it for the express benefit of the City, the Authority, and the Developer Parties; and (ii) agrees that the ICA and this Developer's Consent will be binding on the Developer Parties and agrees to cause each of the other Developer Parties to accept the ICA and this Developer's Consent as a condition to any Transfer.

2. **Indemnity.**

(a) **Indemnified Losses.** In addition to Developer's indemnities in the DDA and the Development Agreement, each Developer Party shall Indemnify the City, the Authority, and each of the City Agencies, together with their respective commissioners, directors, officers, employees, agents, successors, and assigns (collectively, the **"Indemnified City Parties"**), from and against any and all claims, demands, losses, liabilities, damages (including consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and costs (including reasonable attorneys' fees and costs and consultants' fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise (including the reasonable costs of complying with any judgments, settlements, consent decrees, stipulated judgments, or other partial or complete terminations of any actions or proceedings that require any of the Indemnified City Parties to take any action) (collectively, **"Losses"**) arising from or in connection with:

(i) the failure of Infrastructure or other Improvements constructed by such Developer Party to comply at the time of construction with any of the Applicable City Regulations or any applicable State or federal laws or regulations (except for obligations the City accepts under ICA Section 6.1(c)), including those related to disabled access;

(ii) the death of any Person, or any accident, injury, loss, or damage caused to any Person or to any Person's property in the Project Site (except any Public Property on which the Developer Party has not constructed Improvements) and that is directly or indirectly caused by the negligent act or omission of the Developer Party or its agents, servants, employees, or contractors;

(iii) the failure by the Developer Party to obtain an Other Regulatory Approval when needed, or to comply with (1) any Other Regulatory Approval obtained by such Developer Party or to which such Developer Party is subject or (2) the final decree on any appeal or contest of any conditions of any such Other Regulatory Approval;

(iv) any dispute between such Developer Party and any other Developer Party regarding their respective rights or obligations vis-à-vis one another; and

(v) any dispute under third-party contracts or agreements entered into by such Developer Party in connection with its performance under the DDA (except obligations of such Developer Party's tenants to the Authority or any City Authority).

(b) Exclusions. The indemnification obligation under Subsection (a) excludes Losses to the extent:

(i) directly or indirectly caused by the negligent or willful act or omission of an Indemnified City Party;

(ii) caused by the gross negligence or other actionable misconduct of any City Agency acting (or failing to act) in its governmental capacity in the exercise of its police power;

(iii) caused by the failure of any conditions either: (1) that are the City's responsibility under the ICA, the Project Documents, or under City Approvals; or (2) for which the City otherwise in its sole discretion has agreed to accept responsibility as provided in ICA Section 6.1(c);

(iv) arising from any Other Regulatory Approvals relating to the construction of Improvements within the Affordable Housing Lots, provided that the indemnity shall include Losses arising from Other Regulatory Approvals relating to the applicable Developer Party's obligations to implement certain Mitigation Measures or to construct Infrastructure for or within the Affordable Housing Lots but only to the extent that such Mitigation Measure or Infrastructure obligations have not been assumed by the applicable developer of the Affordable Housing Lot;

(v) originating after the date the City accepts title to any Infrastructure in accordance with the Acquisition and Reimbursement Agreement (or otherwise accepts title consistent with the applicable Plan Documents), excluding latent defects and any noncompliance with laws in effect as of the date of the City's acceptance;

(vi) originating from a change in applicable laws that occurs after the date City accepts title to any Infrastructure under the Acquisition and Reimbursement Agreement (or otherwise accepts title consistent with the applicable Project Documents);

(vii) arising from the City's failure to comply with the conditions of any Other Regulatory Approval either: (1) that are the City's responsibility under the ICA, any other

Project Documents, or City Approvals; or (2) for which the City otherwise, in its sole discretion, has agreed to accept responsibility as provided in Section 6.1(c) of the ICA; or

(c) Obligation to Defend. Each Developer Party agrees to defend the Indemnified City Parties against any claims that are actually or likely to be within the scope of such Developer Party's indemnity in this Developer's Consent, even if the claims may be groundless, fraudulent, or false. The Indemnified City Parties agree to give prompt notice to the applicable Developer Party with respect to any lawsuit or claim initiated or threatened against the Indemnified City Parties, at the address for notices to the applicable Developer Party set forth in the DDA, Vertical DDA or Assignment and Assumption Agreement, and no later than the earlier of: (i) ten (10) days after valid service of process as to any suit; or (ii) fifteen (15) days after receiving written notification of a claim or lawsuit that the Indemnified City Party has reason to believe is likely to give rise to a claim for indemnity under this Developer's Consent. An Indemnified City Party's failure to give the foregoing notice will not affect the Indemnified City Party's rights or the obligations of the applicable Developer Party under this Developer's Consent unless such Developer Party is prejudiced by the lack of notice, and then only to the extent of prejudice. The applicable Developer Party, at its option but subject to the Indemnified City Party's reasonable consent and approval, will be entitled to control the defense, compromise, or settlement of any such matter through counsel of its own choice, but in all cases the Indemnified City Party will be entitled to participate in the defense, compromise, or settlement. To the extent such costs are reasonable and are incurred only to participate as requested or reasonably required in the matter, they shall be deemed to be City Costs. If the applicable Developer Party fails to take reasonable and appropriate action to defend, compromise, or settle the lawsuit or claim within a reasonable time following notice from the Indemnified City Party alleging such failure in the Indemnified City Party's reasonable judgment, the Indemnified City Party will have the right to hire counsel at the sole cost of the applicable Developer Party to carry out the defense, compromise, or settlement, which cost will be immediately due and payable to the Indemnified City Party upon receipt by the applicable Developer Party of a properly detailed invoice.

(d) No Effect on Other Indemnities. The agreement to indemnify the Indemnified City Parties in this Developer's Consent is in addition to, and may not be construed to limit or replace, any other obligations or liabilities that any Developer Party may have under the Development Requirements, at common law, or otherwise. The contractual obligations and indemnities of any Developer Party regarding Hazardous Substances will be governed by the DDA and Permits to Enter, as applicable, and not this Article 2.

(e) Survival. The indemnities contained in this Article 2 will survive any termination or expiration of the ICA as to matters that arise during the ICA Term.

3. Limitations on Liability. Developer, on behalf of itself and the other Developer Parties, understands and agrees that no commissioners, members, officers, agents, or employees of the Authority or the City Agencies (or any of their successors or assigns) will be personally liable to the other or to any other Person, nor will any officers, directors, shareholders, agents, partners, members, or employees of any Developer Party (or of its successors or assigns) be personally liable to the Authority, the City Agencies, or any other Person in the event of any default or breach of the ICA by the Authority or the City Agencies or of this Developer's

June 28, 2011

Consent, as the case may be, or for any amount that may become due or any obligations under the ICA or this Developer's Consent, provided, that the foregoing shall not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the issuer of a Guaranty covering such obligation. Neither the Authority nor the City will be liable to any Developer Party for damages under the ICA for any reason.

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This Developer's Consent was executed and delivered as of June 28, 2011.

DEVELOPER

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

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

By: 

Name: Kofi Bonner

Its: Authorized Representative

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

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

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

By: _____

Name: Christopher Meany

Title: Managing Member

This Developer's Consent was executed and delivered as of June 28, 2011.

DEVELOPER

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

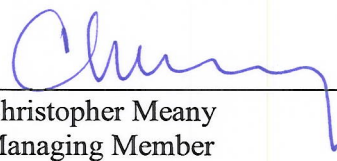
By: UST Lennar HW Scala SF Joint Venture,
a Delaware general partnership
its co-Managing Member

By: _____
Name: Kofi Bonner
Its: Authorized Representative

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

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

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

By: 
Name: Christopher Meany
Title: Managing Member

June 28, 2011

CONSENT TO INFRASTRUCTURE PLAN AND ICA
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("SFMTA") has reviewed the ICA between the City and the Authority related to the Treasure Island/Yerba Buena Island Project, to which this SFMTA Consent to Infrastructure Plan and ICA (this "SFMTA Consent") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the ICA.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Project Infrastructure Plan, the Transportation Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, consented to the following, provided that by executing this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIII A of the City's Charter:

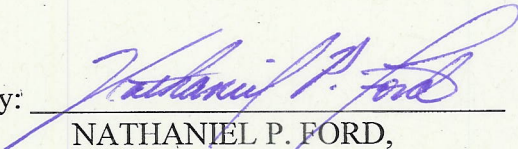
1. the ICA and the Transportation Plan as they relate to matters under SFMTA jurisdiction, including the SFMTA Infrastructure and the Transportation-Related Mitigation Measures;
2. subject to Developer satisfying SFMTA requirements and the Transportation-Related Mitigation Measures for safety, design, construction, testing, performance, training, documentation, warranties and guarantees, that are consistent with the Applicable Regulations and applicable State and federal law, SFMTA accepting the transportation-related infrastructure described in the Infrastructure Plan that will be under SFMTA jurisdiction;
3. subject to identification of resources, appropriation of funds, and other fiscal and operational considerations, including but not limited to, the level of MUNI service provided City-wide, SFMTA procuring, operating, and maintaining transit systems described by the Infrastructure Plan, the Transportation Plan, and the Transportation-Related Mitigation Measures;
4. subject to identification of resources, appropriation of funds, and other fiscal and operational considerations, including but not limited to, the level of MUNI service provided City-wide, SFMTA satisfying the construction required of the SFMTA by the Infrastructure Plan, the Transportation Plan, and Transportation-Related Mitigation Measures, as applicable, and to the extent practicable given fiscal and operational considerations, cooperating with Developer in phasing any required SFMTA construction; and

June 28, 2011

5. TITMA collecting and using all on-island paid parking revenues from in the Project Site in accordance with the provisions of California Assembly Bill 981 (2008).

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

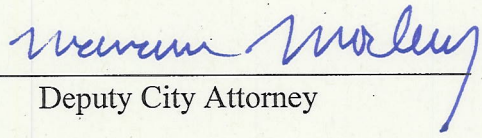
By: _____


NATHANIEL P. FORD,
Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

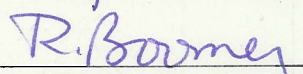

Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. 11-059

Adopted: May 3, 2011

Attest: _____


Secretary, SFMTA Board of Directors

June 28, 2011

CONSENT TO INFRASTRUCTURE PLAN AND ICA
San Francisco Public Utilities Commission

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

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering the Infrastructure Plan and Utility-Related Mitigation Measures at a duly noticed public hearing, consented to:

1. The ICA as it relates to matters under SFPUC jurisdiction, including the SFPUC-Related Infrastructure, the Stormwater Management Controls, and the SFPUC-Related Mitigation Measures;
2. The acceptance, operation and maintenance of SFPUC-Related Infrastructure, subject to appropriation and subject to Developer satisfying the SFPUC requirements for construction, warranties and guarantees, operations and maintenance manuals, testing, and training that are consistent with the Applicable City Regulations and applicable State and federal law, and meeting the SFPUC-Related Mitigation Measures; and
3. The delegation to the SFPUC General Manager or his or her designee any future Approvals of the SFPUC under this ICA, including Approvals of Authority Applications, subject to applicable law including the City’s Charter.

By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit:

1. The exclusive authority of the SFPUC as set forth in Article VIIIB of the City’s Charter, or
2. The SFPUC's full discretion to negotiate the elements of the wastewater/recycled water project, interim operations agreements, and emergency water supply facilities agreements described in section 3.4(f)(iii)(2) of the ICA.

June 28, 2011

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

By: _____
EDWARD HARRINGTON,
General Manager

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

By: _____
Deputy City Attorney

San Francisco Public Utility Commission Resolution No. 11-0068
Approved May 10, 2011.

June 28, 2011

**CONSENT TO INFRASTRUCTURE PLAN AND ICA
San Francisco Fire Department**

The Fire Chief and the Fire Marshall of the City and County of San Francisco have reviewed the ICA to which this Consent to Infrastructure Plan and ICA (this "**SFFD Consent**") is attached and incorporated. Except as otherwise defined in this SFFD Consent, initially capitalized terms have the meanings given in the ICA.

By executing this SFFD Consent, the undersigned confirm that, after considering the Infrastructure Plan and Design for Development, they have consented to:

1. the ICA as it relates to matters under SFFD jurisdiction, including the SFFD Infrastructure;
2. subject to Developer satisfying the SFFD requirements for construction, warranties and guarantees, operations and maintenance manuals, testing, and training that are consistent with the Applicable City Regulations and applicable State and federal law, the SFFD's acceptance of the SFFD Infrastructure and new Fire Station;
3. subject to the appropriation of funds, the SFFD operating and maintaining the SFFD Infrastructure and new Fire Station; and
4. making any future Approvals of the SFFD under this ICA, including Approvals of Authority Applications, subject to applicable law including the City's Charter.

By authorizing this SFFD Consent, the SFFD Fire Chief and Fire Marshall not intend to in any way limit the authority of the SFFD as set forth in Section 4.108 and 4.128 of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through
the SAN FRANCISCO FIRE CHIEF AND
FIRE MARSHALL

By: _____
Fire Chief

June 28, 2011

By: _____
Fire Marshall

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

By: _____
Deputy City Attorney

EXHIBIT A

Infrastructure Plan