

SUBORDINATE PLEDGE AGREEMENT

by the

CITY AND COUNTY OF SAN FRANCISCO

for the benefit of the

UNITED STATES OF AMERICA

Dated as of _____ 1, 20__

**Related to
[Name of Pledging IFD]**

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SUBORDINATE PLEDGE AGREEMENT

THIS SUBORDINATE PLEDGE AGREEMENT (this "**Subordinate Pledge Agreement**"), is made as of ____ 1, 20__, by the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county (the "**City**"), for and on behalf of the [Name of IFD] (the "**Pledging IFD**"), for the benefit of the UNITED STATES OF AMERICA, acting by and through the Department of the Navy (the "**Navy**");

RECITALS:

1. The Treasure Island Development Authority (the "**Authority**") and the Navy are parties to an "Economic Development Conveyance Memorandum of Agreement between the United States of America and the Treasure Island Development Authority for the Conveyance of the Naval Station Treasure Island," dated ____, 2012 (the "**EDC MOA**").

2. Pursuant to Section 4.2.6.2 of the EDC MOA, the Authority agreed to sign and deliver to the Navy through escrow at the Initial Closing (as defined in the EDC MOA) a Promissory Note (as defined in the EDC MOA) in the principal amount of the Initial Consideration (as defined in the EDC MOA), and agreed that the Promissory Note would be secured, to the extent the rents, issues and profits assigned under an Assignment of Rents (as defined in the EDC MOA) are not sufficient to cover the unpaid principal and interest due under the Promissory Note for the Initial Consideration, by a Subordinate Pledge (as defined in the EDC MOA) of Net Available Tax Increment Revenues (as defined in the EDC MOA) generated from the Navy Real Property (as defined in the EDC MOA) prior to or after a conveyance under the EDC MOA, and that the Subordinate Pledge would be subordinate to the pledge of Net Available Tax Increment Revenues to the holders of any bonded indebtedness and to the Developer under the DDA.

3. The Authority and Treasure Island Community Development, LLC (the "**Developer**") are parties to a Development and Disposition Agreement dated as of June 28, 2011 (the "**DDA**").

4. The City and the Developer are parties to a Development Agreement dated as of June 28, 2011 (the "**Development Agreement**").

5. A Financing Plan is attached as Exhibit EE to and is a part of the DDA, and is attached as Exhibit D to and is a part of the Development Agreement (the "**Financing Plan**").

6. The City agrees in Section 3.1 of the Financing Plan that at any time, and from time to time, after the Authority acquires all or part of the Project Site (as defined in the Financing Plan) from the Navy, the Developer may request in writing that the City establish one or more infrastructure financing districts ("**IFDs**") under Government Code Section 53395 et seq., as amended from time to time (the "**IFD Act**"), over all or any part of the property so acquired, and that, as soon as reasonably practical after receipt of a written request from the Developer, the City will establish an IFD over all of the property identified in the written request.

7. In Section 3.4 of the Financing Plan, (i) the City agrees that each IFD, when formed, will irrevocably pledge the Net Available Increment (as defined in the Financing Plan) from the IFD to the financing of the Qualified Project Costs (as defined in the Financing Plan), to the repayment of any Conditional City Increment (as defined in the Financing Plan) used to pay debt service on IFD Debt (as defined in the Financing Plan) for such IFD in the manner set forth in the Financing Plan and to any IFD Debt issued for such IFD and (ii) the City and the Developer acknowledge in Section 3.4 of the Financing Plan that each IFD will make a subordinate pledge of Net Available Increment pursuant to the Navy as required by the EDC MOA. The definition of Net Available Tax Increment Revenues in the EDC MOA is equivalent to the definition of Net Available Increment under the Financing Plan, and the subordination of the Net Available Increment in the manner set forth in this Subordinate Pledge Agreement shall satisfy the requirements of the EDC MOA. Accordingly, the term "Net Available Increment" as defined in the Financing Plan shall be the subject of this Subordinate Pledge Agreement.

8. The City, on behalf of the Pledging IFD, wishes to provide for the subordinate pledge of Net Available Increment required by the EDC MOA, all on the terms and conditions further set forth below.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained in this Subordinate Pledge Agreement, the City, on behalf of the Pledging IFD, hereby agrees as follows:

ARTICLE I

DEFINITIONS; TERM

Section 1.01. Definitions. Unless the context clearly otherwise requires or unless otherwise defined in this Subordinate Pledge Agreement, the capitalized terms in this Subordinate Pledge Agreement shall have the respective meanings given them in the EDC MOA or the Financing Plan, as applicable.

Section 1.02. Rules of Construction. All references in this Subordinate Pledge Agreement to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Subordinate Pledge Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Subordinate Pledge Agreement as a whole and not to any particular Article, Section or subdivision hereof.

Section 1.03. Term of Agreement. This Subordinate Pledge Agreement shall become effective upon its execution and delivery by the City, on behalf of the Pledging IFD, and shall continue in effect until there has been paid to the Navy all amounts owed under the Promissory Note for the Initial Consideration.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the City. The City hereby represents and warrants to the Navy as follows:

(a) The City is a charter city and county, organized and existing under and by virtue of the Constitution of the State with full power, on behalf of the Pledging IFD, to execute this Subordinate Pledge Agreement and authority to perform its obligations hereunder.

(b) The execution and delivery of the Subordinate Pledge Agreement and the performance of its obligations hereunder and thereunder has been duly authorized by the City.

(c) The Subordinate Pledge Agreement has been executed and delivered by the City on behalf of the Pledging IFD and constitutes the legal, valid and binding obligation of the City on behalf of the IFD enforceable upon the City in accordance with its terms.

(d) The execution and delivery of the Subordinate Pledge Agreement by the City on behalf of the Pledging IFD and the consummation of the transactions on its part contemplated hereby and thereby do not conflict with or constitute a breach of or a default under or result in a violation of (i) the IFD Act, (ii) any constitutional or statutory provision or order, rule, regulation or ordinance, or any order, decree or judgment of any court or governmental authority having jurisdiction over the City, the Pledging IFD or any of its properties, or (iii) any agreement or instrument to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending against or threatened against or affecting the City or the Pledging IFD wherein an unfavorable decision, ruling or finding would adversely affect (i) the validity or enforceability of, or the authority or ability of the City, on behalf of the Pledging IFD, to perform its obligations under the Subordinate Pledge Agreement, or (ii) the transactions contemplated to be performed by the City, on behalf of the Pledging IFD, under the Subordinate Pledge Agreement.

(f) The pledge of the Net Available Increment in the manner set forth in this Subordinate Pledge Agreement does not violate the IFD Act.

ARTICLE III

PLEDGE AND IFD PLEDGE PAYMENTS

Section 3.01. Subordinate Pledge. Subject only to (i) Section 3.02 of this Subordinate Pledge Agreement describing the priority in which the Net Available Increment shall be applied during any IFD Debt Year (as defined below), (ii) the prior and superior pledge of the Net Available Increment pursuant to the DDA and the DA to any IFD Debt or other Public Financing outstanding at any time and (iii) the prior and superior pledge of the Net Available Increment for the uses set forth in the Financing Plan (including, but not limited to, the payment to the Developer for the financing of Qualified Project Costs pursuant to the DDA and the DA), all of the Net Available Increment is hereby pledged to secure the Authority's obligation to make Installment Payments to the Navy in accordance with the Promissory Note for the Initial Consideration in the manner set forth in Clause Third of Section 3.02(a). Said pledge shall constitute a lien on and security interest in the Net Available Increment and shall attach, be perfected and be valid and binding from and after the date hereof, without any physical delivery thereof or further act. Except for the Net Available Increment, no funds or properties of the City or the Pledging IFD shall be pledged to, or otherwise liable for, the satisfaction of the City's obligations, on behalf of the Pledging IFD, under this Subordinate Pledge Agreement.

Section 3.02. IFD Pledge Payments.

(a) The City, on behalf of the Pledging IFD, will establish a special fund (the "**Special Fund**"), which will be held by the City, on behalf of the Pledging IFD. Because the City, on behalf of the Pledging IFD, anticipates that any IFD Debt with a fixed interest rate will have a principal payment date of September 1 with interest payments on March 1 and September 1, the City, on behalf of the Pledging IFD, hereby establishes an "**IFD Debt Year**" for purposes of this Subordinate Pledge Agreement as the 12-month period ending on September 1. If for any reason the IFD Debt has a different principal payment date, the IFD Debt Year will be revised to terminate on the principal payment date.

The City, on behalf of the Pledging IFD, will deposit all of the Net Available Increment received by the Pledging IFD in an IFD Debt Year into the Special Fund and will apply amounts in the Special Fund as follows, with each obligation to be satisfied in its entirety before Net Available Increment is applied to the next obligation:

First: Pay or set aside the amount of such Net Available Increment that is needed in that IFD Debt Year to pay debt service on any outstanding IFD Debt or other Public Financing secured by such Net Available Increment, or to replenish a debt service reserve fund for any such outstanding IFD Debt or other Public Financing.

Second: Repay the City for the use of any Conditional City Increment allocated to the Pledging IFD in order to pay debt service on any IFD Debt of such Pledging IFD.

Third: Apply the Net Available Increment without restriction by this Subordinate Pledge Agreement to any other purposes and in the priority set forth in the Financing Plan, including, but not limited to, paying or reimbursing Developer for Qualified Project Costs. However, only upon the occurrence of and for the duration of any event of default by Developer under the DDA that causes a default in the payment of an Installment Payment, the City, on behalf of the Pledging IFD, agrees to withhold from Developer all Net Available Increment to be paid to Developer pursuant to this Clause Third and apply such withheld Net Available Increment to pay to the Navy an amount equal to any deficiency in amounts payable to the Navy by the Authority for the Installment Payment due in that or any previous IFD Debt Year. Any such payment to the Navy described in this Clause Third is referred to in this Subordinate Pledge Agreement as an “**IFD Pledge Payment.**”

(b) On the final day of each IFD Debt Year, any Net Available Increment remaining in the Special Fund after payment of the amounts required above shall be released from the pledge and lien hereunder and shall be used by or on behalf of the Pledging IFD for any other purposes and in the priority set forth in the Financing Plan.

ARTICLE IV

COVENANTS OF THE CITY

Section 4.01. Punctual Payment. The City, on behalf of the Pledging IFD, will punctually pay or cause to be paid to the Navy the IFD Pledge Payments in strict conformity with the terms of this Subordinate Pledge Agreement, and the City, on behalf of the Pledging IFD, will faithfully observe and perform all of the conditions, covenants and requirements of it under this Subordinate Pledge Agreement.

Section 4.02. No Limit on IFD Debt; Public Financing. Nothing in this Subordinate Pledge Agreement shall in any way limit the City, on behalf of the Pledging IFD, or the Pledging IFD from pledging the Net Available Increment to or issuing IFD Debt or any other Public Financing for the purpose of financing Qualified Project Costs.

Section 4.03. Protection of Security. The City, on behalf of the IFD, agrees to contest any assertion by any officer of any governmental entity or any other person with respect to the enforceability of the City's obligations on behalf of the Pledging IFD hereunder. From and after execution and delivery of this Subordinate Pledge Agreement, the City's obligations hereunder on behalf of the IFD shall be incontestable by the City.

Section 4.04. Further Assurances. The City, on behalf of the Pledging IFD, will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the obligations on its part under this Subordinate Pledge Agreement.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. The following events shall constitute Events of Default hereunder:

(a) Failure by the City, on behalf of the Pledging IFD, to make IFD Pledge Payments when and as the same shall become due and payable.

(b) Failure by the City, on behalf of the Pledging IFD, to observe or perform any of its obligations under this Agreement or if the City is otherwise in breach of this Agreement, after having been provided written notice and failing to cure the default within thirty (30) days after such notice.

(c) The filing by the Pledging IFD of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Pledging IFD, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Pledging IFD or of the whole or any substantial part of its property.

If an Event of Default has occurred and is continuing, the Navy may exercise any remedies available to the Navy in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the Navy shall give notice of such Event of Default to the City by telephone, fax or other telecommunication device, promptly confirmed in writing.

Section 5.02. No Waiver. Nothing in this Article V or in any other provision of this Subordinate Pledge Agreement shall affect or impair the obligation of the City, which is absolute and unconditional, to apply Net Available Increment as set forth in this Subordinate Pledge Agreement, or affect or impair the right of action, which is also absolute and unconditional, of the Navy to institute suit to enforce such payment by virtue of the contract embodied in this Subordinate Pledge Agreement.

A waiver of any default by the Navy shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the Navy to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Navy by this Article V may be enforced and exercised from time to time and as often as shall be deemed expedient by the Navy.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Navy, the City and the Navy shall be restored to

their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 5.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Navy is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Limited Liability for the Installment Payments. Neither the City nor the Pledging IFD shall have any liability for payment of the Installment Payments except as set forth in Sections 3.01 and 3.02 hereof.

Section 6.02. Benefits Limited to Navy. Nothing in this Subordinate Pledge Agreement, expressed or implied, is intended to give to any person other than the Navy any right, remedy or claim under or by reason of this Subordinate Pledge Agreement. All covenants, stipulations, promises or agreements in this Subordinate Pledge Agreement contained by and on behalf of the City, on behalf of the Pledging IFD shall be for the sole and exclusive benefit of the Navy.

Section 6.03. Successor is Deemed Included in All References to Predecessor; Assignment. Whenever in this Subordinate Pledge Agreement any of the City, the Pledging IFD or the Navy is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Subordinate Pledge Agreement contained by or on behalf of the City, on behalf of the Pledging IFD, or on behalf of the Navy shall bind and inure to the benefit of the successors and assigns of the City, the Pledging IFD, or the Navy, respectively, whether so expressed or not.

The City shall not assign any of its rights or responsibilities on behalf of the Pledging IFD under this Subordinate Pledge Agreement without the prior written consent of the Navy.

Section 6.04. Amendment. This Subordinate Pledge Agreement may be amended by the City, on behalf of the IFD, with the prior written consent of the Navy.

Section 6.05. Waiver of Personal Liability. No member, officer, agent or employee of the City or the Pledging IFD shall be individually or personally liable for the obligations of the City on behalf of the Pledging IFD under this Subordinate Pledge Agreement; but nothing contained in this Subordinate Pledge Agreement shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 6.06. Notices. All written notices to be given under this Subordinate Pledge Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other in writing from time to time. Notice shall be effective 48 hours after deposit in the United States mail, postage prepaid or, in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the Navy:

At the addresses set forth in the EDCMOA

If to the City:

[to come]

Section 6.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Subordinate Pledge Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the remainder of this Subordinate Pledge Agreement.

Section 6.08. Applicable Law. This Subordinate Pledge Agreement shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the City, on behalf of the Pledging IFD, intending to be legally bound hereby, has caused its duly appointed representatives to execute this Subordinate Pledge Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, for and
on behalf of [Pledging IFD]

By: _____
Name: _____
Title: _____

Approved as to form:

DENNIS J. HERRERA,
City Attorney

By: _____
Name: _____
Deputy City Attorney

Approved on _____

Board of Supervisors Ordinance No. _____