
**ACQUISITION AND REIMBURSEMENT AGREEMENT
(POWER STATION)**

by and between

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

and

**CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company**

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LIST OF EXHIBITS

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

**ACQUISITION AND REIMBURSEMENT AGREEMENT
(POWER STATION)**

This ACQUISITION AND REIMBURSEMENT AGREEMENT (including any Supplement, this “**Agreement**”), dated for reference purposes only as of _____, 2022, is by and between City and Developer. As used in this Agreement, capitalized terms used herein have the meanings given to them in Article 9. Capitalized terms used but not otherwise defined in Article 9 have the meanings given to them in the Development Agreement.

RECITALS

A. Financing Plan. The City and Developer have entered into the Development Agreement, to establish the contractual framework for mutual cooperation necessary to implement the Project.

Under the Development Agreement and Government Code Section 53314.9, the City agrees to acquire authorized improvements and reimburse Qualified Project Costs; Qualified Project Costs include the costs of acquiring and constructing publicly-owned improvements and improvements that are privately-owned for the public benefit.

B. Purpose of this Agreement. This Agreement describes the procedures by which, at Developer’s request, the City will (1) acquire Acquisition Facilities and pay the related purchase price and (ii) reimburse the costs of Privately-Owned Community Improvements.

C. Acknowledgements. The City and Developer acknowledge the following:

(1) Developer may construct authorized improvements before CFD Bond proceeds and Remainder Taxes (together, “Funding Sources”) that will be used to acquire them or pay related Qualified Project Costs, as applicable, are available.

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

(3) Acquisition Facilities to be acquired by the City may be conveyed to and accepted by the City before the applicable payment requests are paid in full. Likewise, Privately-Owned Community Improvements may be conveyed to the owner thereof before the applicable payment requests are paid in full.

(4) The unpaid balance of applicable payment requests shall be paid when sufficient Funding Sources become available, whether or not at such time the City or other Person has accepted the relevant improvements, to the extent permitted by Government Code Section 53313.51, and such payments may be made: (A) in any number of installments as Funding Sources become available; (B) irrespective of the length of time payment is deferred; and (C) except with respect to the final payment for any Acquisition Facility to be acquired by the City , prior to formal acceptance by the Governmental Entity of the Acquisition Facility that are the subject of such payment requests.

(v) Developer's conveyance or dedication of Acquisition Facilities to the City before the availability of Funding Sources to acquire such Acquisition Facilities is not a dedication or gift or a waiver of Developer's right to payment of such Acquisition Facilities under the Financing Plan or this Agreement. Likewise, Developer's conveyance or dedication of Privately-Owned Community Improvements to the applicable Person before the availability of Funding Sources to reimburse for such Privately-Owned Community Improvements is not a dedication or gift or a waiver of Developer's right to payment of such Privately-Owned Community Improvements under the Financing Plan or this Agreement.

AGREEMENT

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

ARTICLE 1 FUNDING

1.1 Use of Funding Sources. This Agreement: (a) implements and is subject to all limitations of the Development Agreement and the Financing Plan; (b) will become effective on the full execution and delivery of this Agreement (the "**Effective Date**"); and (c) describes the procedures by which, at Developer's request, the City will use available Funding Sources to make payments to Developer for the Actual Costs (or such lesser amount required by Section 4.4(a) and Section 5.3(b)) of the Acquisition Facilities, Components or Privately-Owned Community Improvements, as contemplated in the Financing Plan. To the extent set forth in an Assignment and Assumption Agreement, Developer will mean a Transferee.

1.2 Exhibit A and Supplements to Exhibit A. The Parties intend Exhibit A to be a complete list of all items eligible and intended to be financed by Funding Sources under the Financing Plan. Exhibit A sets forth: (a) reasonably detailed descriptions of all of the Acquisition Facilities; and (b) reasonably detailed descriptions of all of the Privately-Owned Community Improvements. At any time, Developer may submit proposed Supplements to Exhibit A for review in accordance with Section 1.4 that describe in reasonable detail any proposed revisions or additions to the Acquisition Facilities and Privately-Owned Community Improvements.

1.3 Exhibit B and Supplements to Exhibit B. The Parties intend Exhibit B to be a refinement of Exhibit A as the Parties obtain more information about the Acquisition Facilities and Privately-Owned Community Improvements, and the Actual Costs that are to be reimbursed under this Agreement. At any time, Developer may submit proposed Supplements to Exhibit B for review in accordance with Section 1.4 that: (a) describe and provide detail on any portion of the Acquisition Facilities set forth on Exhibit A, including the identification and detail of any Components of the Acquisition Facilities; (b) provide estimates of the Actual Costs of any portion of the Acquisition Facilities set forth on Exhibit A, including of any Components thereof; (c) provide estimates of the Actual Costs of the Privately-Owned Community Improvements; and (d) otherwise update or modify any other information in Exhibit B. The Parties agree that the City will not be obligated to pay Developer for the Actual Costs (or such lesser amount required

by Section 4.4(a)) of an Acquisition Facility or a Component or for the Actual Costs (or such lesser amount required by Section 5.3(b)) of a Privately-Owned Community Improvements under this Agreement unless such Acquisition Facility or Component and its estimated Actual Cost or such Privately-Owned Community Improvement and its estimate Actual Cost is set forth on Exhibit B.

1.4 Review and Approval of Supplements. The Department of Public Works will be the lead City agency to facilitate coordinated review of the Project and will assist the City as provided under this Agreement. Except as specifically provided otherwise in this Agreement, the Department of Public Works will be the lead City agency responsible for review of Developer's estimated Actual Costs and of any changes to its estimates of Actual Costs of Acquisition Facilities and Components or Privately-Owned Community Improvements contained in any Supplements submitted under this Agreement, subject to the following:

(a) Upon Developer's written request, the Department of Public Works will meet with representatives of Developer to establish acceptable contents of any Supplements to Exhibit A or Exhibit B. Subject to subsection (b) below, the Department of Public Works will have thirty (30) calendar days after receipt of a proposed Supplement submitted with Developer's written request for review and approval to accept or object in writing to all or any portion of the proposed Supplement. Developer may resubmit any proposed Supplement to which the Department of Public Works has timely objected, and the Department of Public Works will have thirty (30) calendar days to review any resubmitted proposed Supplement. The term "**Supplement Review Period**" as used in this Agreement will mean the applicable period specified above in this Section 1.4(a). If the Department of Public Works fails to notify Developer in writing that a Supplement is disapproved within the Supplement Review Period, then the Supplement will be Deemed Approved.

(b) The Department of Public Works will only be required to review a proposed Supplement after it is complete and contains all of the information set forth in Section 1.2 or Section 1.3, as applicable, and any supporting materials reasonably requested in writing by the Department of Public Works in connection with the proposed Supplement. The Supplement Review Period will be tolled: (i) as to a Supplement for which the Department of Public Works has requested additional information or materials, until such requested information or materials have been provided to the Department of Public Works; and (ii) as to any additional Supplement proposed by Developer during any Supplement Review Period, until any previously-submitted Supplement has been reviewed and approved, timely objected to or Deemed Approved, unless the Parties agree to a different order of priority for the Department of Public Works' review. Within the Supplement Review Period, as it may be tolled under this Section 1.4(b), the Department of Public Works will send a notice of approval or disapproval to Developer. Any notice of disapproval must state with specificity the Department of Public Works' grounds for disapproval, which must be made in good faith and will be limited to the following:

(i) For disapproval of a proposed Supplement to Exhibit A:
(A) a proposed Acquisition Facility or Privately-Owned Community Improvement is not contemplated to be financed by the Development Agreement; or (B) a proposed Acquisition

Facility or Privately-Owned Community Improvement may not be financed under the Governing Acts or the Development Agreement.

(ii) For disapproval of a proposed Supplement to Exhibit B: (A) the specified Acquisition Facilities or Privately-Owned Community Improvements are not listed on Exhibit A; (B) specified Components are not components of the Acquisition Facilities listed on Exhibit A; (C) for an Acquisition Facility with an estimated Actual Cost of one million dollars (\$1,000,000) or less, a proposed Component is not a complete, functional portion of an Acquisition Facility; or (D) all or any portion of the specified Acquisition Facility or Privately-Owned Community Improvements are not eligible to be financed as components under the Governing Acts.

(c) Any proposed Supplement approved or Deemed Approved in accordance with this Section 1.4 will be made a part of Exhibit A or Exhibit B, as applicable, without further approval of the City.

1.5 Funding Sources.

(a) The City will not be obligated to pay all or any part of the Actual Cost of an Acquisition Facility or Component or a Privately-Owned Community Improvement under this Agreement except from Funding Sources or any other sources that are mutually agreed to by the City and Developer. Unless otherwise agreed to in writing by the parties, in no circumstances shall the City's General Fund, credit, taxing power (other than to the limited extent described in this Agreement) or revenues other than the Funding Sources be pledged or be available to pay all or any part of the Actual Cost of an Acquisition Facility or Component or Privately-Owned Community Improvement, nor shall the City have any liability to pay all or any part of the Actual Cost of an Acquisition Facility or Component or Privately-Owned Community Improvement if the Acquisition Facility, Component, or Privately-Owned Community Improvement is determined to be ineligible to be financed under the Governing Acts, even if the City or the Department of Public Works did not object to the Exhibit or Supplement listing it on the grounds of ineligibility.

(b) Developer acknowledges that if the City and Developer agree to issue escrow bonds as part of an issuance of CFD Bonds and funds are deposited in an escrow fund, escrowed amounts will become Funding Sources: (i) only after satisfaction of all escrow requirements and release from the escrow fund; and (ii) in the amounts specified in the applicable Indenture. The City agrees to take all reasonable actions necessary to cause the satisfaction of all the conditions to the release of funds from an escrow fund.

(c) The City makes no warranty, express or implied, that Funding Sources will be sufficient to pay for all of the Acquisition Facilities, Components, and Privately-Owned Community Improvements. Other than as contemplated by the Funding Sources or as otherwise agreed to in writing by the parties, in no circumstances shall the City's credit, taxing power (other than to the limited extent described in this Agreement) or General Fund or any revenues other than the Funding Sources be pledged to or be available to pay all or any part of the Actual Cost of an Acquisition Facility, Components or all or any part of any Privately-Owned Community Improvements.

1.6 Deposits of Funding Sources.

(a) The proceeds of any CFD Bonds will be deposited, held, invested, reinvested, and disbursed as provided in the respective Indenture, all in a manner consistent with the Financing Plan and this Agreement. The portion of the proceeds of any CFD Bonds that is used to fund reserves for debt service, to capitalize interest on the CFD Bonds, and to pay costs of issuance and administration will not constitute Funding Sources.

(b) Pursuant to the Financing Plan, under certain circumstances, a portion of Remainder Taxes generated from a CFD may be deposited and held in, and invested, reinvested, and disbursed from the applicable Remainder Taxes Project Account. Developer acknowledges that from and after the CFD Conversion Date for such CFD, without the consent of the City, any Remainder Taxes for a CFD deposited in the CFD's Remainder Taxes Project Account will not be available to pay the Actual Costs of Acquisition Facilities, Components or Privately-Owned Community Improvements.

(c) Developer agrees that the City alone will direct the investment of Funding Sources in accordance with the City's investment policy and all applicable laws and the applicable Indenture. The City will have no responsibility to Developer with respect to any investment of Funding Sources before their use under this Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment, even if a loss diminishes the amount of available Funding Sources.

1.7 Payment of Certain Costs. The City and Developer agree that certain professional and consulting costs that Developer incurs in connection with the issuance of CFD Bonds will be financed with proceeds of the CFD Bonds to the extent permitted by the applicable Governing Act.

ARTICLE 2
CONSTRUCTION OF ACQUISITION FACILITIES AND PRIVATELY-OWNED
COMMUNITY IMPROVEMENTS

2.1 Plan Documents. Developer will prepare and obtain approval by the City of all Plan Documents for the Acquisition Facilities and by such other relevant Person for the Privately-Owned Community Improvements in accordance with, and at the times necessary to comply with the provisions of the Development Agreement.

2.2 Obligation to Construct Acquisition Facilities and Privately-Owned Community Improvements. Developer's obligation to construct the Acquisition Facilities and the Privately-Owned Community Improvements is governed by the Development Agreement. This Agreement does not create an obligation to construct any Acquisition Facility, Component or Privately-Owned Community Improvement. This Article 2 applies only to those Acquisition Facilities, Components or Privately-Owned Community Improvements for which Developer seeks the payment of the Actual Costs under this Agreement.

2.3 Relationship to Public Works Contracting Requirements.

(a) This Agreement provides for the acquisition of the Acquisition Facilities and payment for Components and the Privately-Owned Community Improvements from time to time from Funding Sources and is not intended as a public works contract. The Parties acknowledge and agree that the Acquisition Facilities, Components and Privately-Owned Community Improvements are of local, and not state-wide, concern, and that the provisions of the California Public Contract Code do not apply to the construction of the Acquisition Facilities, Components or Privately-Owned Community Improvements. The City and Developer further acknowledge and agree that any public works contracting requirements of the City are not applicable to the construction and acquisition of the Acquisition Facilities, Components or Privately-Owned Community Improvements. Nothing in this Section 2.3(a) shall limit or alter the requirements of the Development Agreement, including without limitation, the payment of prevailing wages as set forth in the Development Agreement.

(b) Developer agrees to award all contracts and execute all contract change orders for construction of the Acquisition Facilities, Components and Privately-Owned Community Improvements in a manner consistent with the Development Agreement.

(c) From time to time at the request of the City, representatives of Developer must meet and confer with the City and Department of Public Works staff, consultants, and contractors regarding matters arising under this Agreement with respect to the Acquisition Facilities, Components or Privately-Owned Community Improvements, compliance with City bidding requirements, and the progress in constructing and acquiring the same, and as to any other matter related to the Acquisition Facilities, Components or Privately-Owned Community Improvements or this Agreement. The City and Department of Public Works staff will have the right: (i) to attend (and at the request of Developer will attend) meetings between Developer and its contractors relating to the Acquisition Facilities, Components and Privately-Owned Community Improvements; and (ii) to meet and confer with individual contractors and Developer if deemed advisable by the City to resolve disputes or ensure the proper completion of the Acquisition Facilities, Components and Privately-Owned Community Improvements.

2.4 Independent Contractor.

(a) In performing under this Agreement, Developer is an independent contractor and not the agent or employee of the City or the CFD. Except as otherwise provided in this Agreement, none of the City or the CFD will be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of Developer.

(b) The City has determined that it would obtain no advantage by directly undertaking the construction of the Acquisition Facilities or the Privately-Owned Community Improvements, and the City and Developer hereby agree that the Acquisition Facilities and Privately-Owned Community Improvements shall be constructed by Developer as if they had been constructed under the direction and supervision, or under the authority, of the City.

ARTICLE 3
ACQUISITION AND PAYMENT OF ACQUISITION FACILITIES

3.1 Inspection.

(a) This Article 3 applies only to those Acquisition Facilities and Components for which Developer seeks the payment of Actual Costs under this Agreement. Components may only be financed to the extent allowed under the applicable Governing Act. This Article 3 does not apply to Privately-Owned Community Improvements.

(b) Except as set forth in Section 3.3, the City will not be obligated to pay the Actual Costs (or such lesser amount required by Section 4.4(a)) of Acquisition Facilities or Components under this Agreement to Developer until the applicable Acquisition Facility or Component has been inspected and found by the Director of Public Works to be Ready for Payment. For purposes of clarification, for a Component that is dependent on the completion of other Components to actually be operational, the term "ready for intended use" means only that the Component has been constructed in accordance with the applicable Plan Documents and is capable of being operational when the other Components are completed.

(c) For Acquisition Facilities and Components to be acquired by the City, the Director of Public Works will arrange for the inspection to commence within five (5) Business Days following receipt of Developer's written request to inspect Acquisition Facilities or Components that Developer believes in good faith are Ready for Payment (the "**Inspection Request**"). The inspection will be conducted with due diligence and in a reasonable time given the scope of the inspection but not to exceed twenty-one (21) calendar days. Within five (5) Business Days following the completion of the inspection, the Director of Public Works shall notify Developer of the results of the inspection by providing a Completion Confirmation or by providing a punch list of items to be corrected.

3.2 Agreement to Sell and Purchase Acquisition Facilities. Developer agrees to sell Acquisition Facilities and Components to the City, and the City agrees to use available Funding Sources to pay the Actual Cost of the Acquisition Facilities and Components to Developer, subject to this Agreement (including, but not limited to, Section 4.4(a)) and the Financing Plan.

3.3 Component Financing.

(a) Section 53313.51 of the CFD Act authorizes the purchase of a Component of an Acquisition Facility where such Acquisition Facility has an estimated cost of up to one million dollars (\$1,000,000), but only if the Component is capable of serviceable use as determined by the City. Subject to the availability of Funding Sources, the City agrees to pay to Developer the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Components under this Section 3.3(a) before: (i) completion of the Acquisition Facility of which the Component is a part (unless it is the final Component of an Acquisition Facility); or (ii) the transfer to the City of title to the Acquisition Facility and the property underlying applicable Component. A reasonably detailed description and estimated Actual Cost of each Component to

be financed under this Section 3.3(a) must be listed on Exhibit B (either originally or through an approved or Deemed Approved Supplement).

(b) If the estimated cost of an Acquisition Facility exceeds one million dollars (\$1,000,000), section 53313.51 of the CFD Act authorizes the purchase of Components whether or not the Components are capable of serviceable use. Subject to the availability of Funding Sources, the City agrees to pay to Developer the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Components under this Section 3.3(b) before: (i) completion of the Acquisition Facility of which the Component is a part (unless it is the final Component of an Acquisition Facility); or (ii) the transfer to the City of title to the Acquisition Facility and the property underlying the Component. A reasonably detailed description and estimated Actual Cost of each Component to be financed under this Section 3.3(b) must be listed on Exhibit B (either originally or through an approved or Deemed Approved Supplement).

(c) Developer acknowledges that the City will not be obligated to accept an Acquisition Facility of which a Component is a part until the entire Acquisition Facility has been constructed and determined to be Complete as required under the Development Agreement. The City acknowledges that a Component does not have to be accepted by the City as a condition precedent to the payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of the Component.

(d) The procedures for payment of the Actual Cost of a Component described in this Section 3.3 will be governed by Article 4.

3.4 Defective or Nonconforming Work. If the Director of Public Works finds any of the work done or materials furnished for an Acquisition Facility or Component to be defective or not in conformance with the applicable Plan Documents and the Applicable Standards and such finding is made: (a) prior to payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Acquisition Facility or Component, the City may withhold the applicable payment until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works; or (b) after payment of the Actual Costs (or such lesser amount required by Section 4.4(a)) of such Acquisition Facility or Component, then the Development Agreement will govern cure rights and obligations.

3.5 Conveyance of Land, Title. The transfer of, maintenance of, and right of entry with respect to all land on, in, or over which any of the Acquisition Facilities will be located will be governed by the Development Agreement and the Applicable Standards.

ARTICLE 4

PAYMENT REQUESTS FOR ACQUISITION FACILITIES AND COMPONENTS

4.1 Payment Requests. This Article 4 applies only to those Acquisition Facilities and Components for which Developer seeks the payment of Actual Costs under this Agreement. This Article 4 does not apply to Privately-Owned Community Improvements.

(a) To initiate the process for payment of the Actual Cost of an Acquisition Facility or Component, Developer must deliver to the Director of Public Works a Payment Request in the form of Exhibit C that contains all relevant information, including the

identity of all Funding Sources that are eligible to be used to pay it (the “**Identified Funding Sources**”), together with all required attachments and exhibits, all in an organized manner. Required attachments include:

- (i) a copy of the Completion Confirmation; and
- (ii) Proof of Payment evidencing that the Actual Costs were previously incurred and, if applicable, paid, for the Acquisition Facility or Component.

(b) Any Payment Request for a Component must be supported by the following documentation:

- (i) a statement specifying each contractor, subcontractor, materialman, and other Person with whom Developer or its contractor has entered into contracts or contract change orders with respect to any Component included in the Payment Request and, for each of them: (A) the amount of each such contract; and (B) the amount of the requested Actual Cost attributable to each specific contractor, subcontractor, materialman, and other Person; and

- (ii) duly executed unconditional or conditional lien releases and waivers (in the applicable form provided in Calif. Civil Code § 3262) from all contractors, subcontractors, materialmen, consultants, and other Persons retained by Developer in connection with the Component, under which each such Person unconditionally or conditionally waives all lien and stop notice rights with respect to the pending payment.

(c) A Payment Request for a Completed Acquisition Facility will be complete only after Developer has submitted all of the following documents, to the extent applicable:

- (i) if the real property on which the Acquisition Facility is located is not owned by the City at the time of the request, a copy of the recorded document(s) conveying Acceptable Title to the real property to the City;

- (ii) a copy of the Completion Confirmation;

- (iii) an executed assignment of any warranties and guaranties for the Acquisition Facility, in a form acceptable to the City;

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

- (v) assignment of any and all rights of Developer to reimbursement from Third Parties with respect to the Actual Costs that are the subject of the Payment Request;

- (vi) an executed bill of sale for any utility substructures (e.g. vaults, conduits, etc.) that are the subject of the Payment Request, if applicable; and

(vii) duly executed unconditional or conditional lien releases and waivers (in the applicable form provided in Calif. Civil Code § 3262) from all contractors, subcontractors, materialmen, consultants, and other Persons retained by Developer in connection with the Acquisition Facility, under which each such Person unconditionally or conditionally waives all lien and stop notice rights with respect to the pending payment.

(d) Developer will specify the “**Developer Allocation**” that is included in the calculation of the Actual Cost in Exhibit C-2 to each Payment Request under this Article 4, showing how Developer has allocated the following costs paid or incurred by Developer (as applicable):

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

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

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

4.2 Processing Payment Requests for Acquisition Facilities and Components.

(a) Within ten (10) calendar days after receipt of any Payment Request, the Director of Public Works will review the Payment Request to: (i) determine that it is complete; or (ii) determine that the Payment Request is incomplete and to request additional information and documentation reasonably necessary for the Director to complete the review. If the Director of Public Works fails to notify Developer within the 10-calendar day review period that a Payment Request is incomplete, the Payment Request will be deemed complete. Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review.

(b) Within thirty (30) calendar days after the date a Payment Request is determined or deemed to be complete under Section 4.2(a), the Director of Public Works will review the Payment Request to confirm that all conditions in Article 3 and Section 4.1 have been satisfied, to the extent applicable, and provide notice to Developer either that: (i) the Payment Request is approved (which will be confirmed by counter-signing the Payment Request); or (ii) the Payment Request is disapproved in whole or in part, specifying in the notice the portion of the Payment Request that is disapproved and the reason(s) for disapproval. If the Payment Request is disapproved in part, the Director of Public Works will forward the Payment Request to the City for partial payment under Section 4.3, together with a copy of the Director’s notice of disapproval to Developer. Developer may resubmit any Payment Request disapproved in whole or in part with additional supporting documentation, and the Director of Public Works will review it within the amount of time that is reasonable in light of the materiality of the reasons for the disapproval, not to exceed fourteen (14) calendar days. If the Director of Public Works fails

to notify Developer within the review period that a Payment Request is approved or disapproved, then the Payment Request will be Deemed Approved.

(c) The period within which the Director of Public Works must review a Payment Request under Section 4.2(a) or Section 4.2(b) will be tolled: (i) as to any Payment Request, until Developer has provided any additional information or documentation that the Director of Public Works has requested under Section 4.2(a) or Section 4.2(b); and (ii) as to any additional Payment Request submitted by Developer during the review period under Section 4.2(a) or Section 4.2(b), until all previously-submitted Payment Requests have been reviewed and approved, disapproved or Deemed Approved, unless the Parties agree to a different order of priority for review by the Director of Public Works.

(d) The process for review of the Payment Requests is subject to Article 6.

4.3 Payment.

(a) Within five (5) Business Days after (i) approving a Payment Request or after the Deemed Approval of a Payment Request, and (ii) receipt of the Completion Confirmation, the Director of Public Works will forward the counter-signed approved Payment Request to the Director of Public Finance. If the Director of Public Works has not forwarded a counter-signed approved Payment Request within that period, Developer will have the right to deliver the unsigned Payment Request, together with proof of its delivery to the Director of Public Works, directly to the Director of Public Finance, with a copy to the Director of Public Works.

(b) The Developer Allocations will be presumed to be reasonable and will be accepted for all purposes of this Agreement unless the Director of Public Works notifies Developer of the City's good-faith objection to the Developer Allocation shown in the Payment Request within five (5) Business Days after the Director of Public Works receives the unsigned Payment Request and proof of delivery from Developer. If the Director of Public Works has timely objected to the Developer Allocation, then the Director of Public Works and Developer will promptly meet and confer in an attempt to agree on how to allocate such costs on a reasonable basis (the "**Agreed-Upon Allocation**").

(c) The City must pay the Actual Costs (or such lesser amount required by Section 4.4(a)) to the extent of available Identified Funding Sources within fifteen (15) Business Days after the City's receipt of a counter-signed approved Payment Request (or an unsigned Payment Request and proof of delivery). If the City objected to the Developer Allocation under Section 4.3(b), then the City may withhold payment only of the amount of the Developer Allocation that is the subject of the City's objection, and all undisputed portions of the Developer Allocation shall be paid to the Developer. When the City and Developer agree on the Agreed-Upon Allocation, any portion of the Developer Allocation that was withheld but that the City and Developer have agreed is part of the Agreed-Upon Allocation will be paid by the City to Developer within fifteen (15) Business Days thereafter. At the written request of Developer, the City will make payments under any approved or Deemed Approved Payment Requests directly to a Third Party, such as a contractor or supplier of materials.

4.4 Restrictions on Payments for Acquisition Facilities and Components. The following restrictions will apply to any payments made to Developer under Section 4.3:

(a) The total amount paid for any Acquisition Facility or Component must not exceed the lesser of the Actual Cost or value. Any Acquisition Facility or Component constructed in accordance with the Plan Documents will be presumed to have a value equal to its Actual Cost unless either Developer or the City provides evidence that extraordinary costs have been incurred. Promptly following the notice, the Director of Public Works and Developer will meet and confer to review the Actual Costs and make a reasonable determination of value. The Parties acknowledge and agree that all payments to Developer for the Actual Costs are intended to be payments to Developer for monies already expended or for immediate payment by Developer (or directly by the City) to Third Parties. Costs will not constitute extraordinary costs unless the City can demonstrate that the costs are commercially unreasonable under the circumstances.

(b) Subject to Section 4.4(e), the City will withhold final payment for any Completed Acquisition Facility (but not for any Component that is not the final Component of an Acquisition Facility) constructed in, on, or over land, until Acceptable Title to such land has been conveyed to the City if required under Section 4.1(c).

(c) Subject to Section 4.4(e), the City may withhold final payment for any Completed Acquisition Facility (if it has no Components) or the final Component of any Completed Acquisition Facility until: (i) the Completed Acquisition Facility has been finally inspected as provided in Section 3.1; (ii) the Acceptance Date for the Acquisition Facility has occurred and the requirements of Section 4.1 have been satisfied to the extent applicable; and (iii) general lien releases for the Acquisition Facility (conditioned solely upon payment from Funding Sources to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works.

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

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

obligated to release any retention it withholds in accordance with applicable City policies and procedures.

4.5 Additional Notice for Deemed Approval. Deemed Approval in those circumstances described in this Agreement will only occur following satisfaction of the following conditions:

(a) Developer must send notice by electronic mail, addressed to one or more line staff responsible for the specific matter for which approval is sought at least five, but no more than seven, business days before the response period has ended, stating in the subject line, “Immediate Action Required To Avoid Deemed Approval” or words to the same effect.

(b) If the electronic mail notice under clause (a) is not delivered timely, the City will not be deemed to have approved until the sixth business day after the notice is delivered. The response may be delivered by the addressee or other person authorized to act on the

ARTICLE 5

PAYMENT REQUESTS FOR PRIVATELY-OWNED COMMUNITY IMPROVEMENTS

5.1 Authorized Payments. This Article 5 applies only to Privately-Owned Community Improvements for which Developer seeks reimbursement under this Agreement.

5.2 Processing Payment Requests for Privately-Owned Community Improvements.

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

(i) an inspection report signed by the authorized representative of the Developer or the owner of such Privately-Owned Community Improvement certifying that the Privately-Owned Community Improvement was constructed in accordance with Approvals and permits issued by the City and/or any Non-City Responsible Agencies, as applicable;

(ii) a final certificate of occupancy issued by the applicable City agency for the Privately-Owned Community Improvement;

(iii) acceptable forms of proof of payment for the Qualified Project Costs to be reimbursed;

(iv) other documents specified in the Development Agreement, including, without limitation, the offer in perpetuity for Privately-Owned Public Open Spaces (as defined in the Development Agreement) to be used for the

enjoyment and benefit of the public for open space and recreational purposes only required by Development Agreement Exhibit L-2; and

(v) other documents specified in Exhibit D (Form of Payment Request) to the extent applicable.

(vi) a completed copy of Exhibit D1 specifying each contractor, subcontractor, materialman, and other person with whom Developer or its contractor has entered into contracts with respect to any Privately-Owned Community Improvement included in the Payment Request;

(vii) the contract amount for each contract; and

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

(b) Cost Allocation. Developer will provide its cost allocation proposal for the categories of Actual Costs listed below. Developer's cost allocation proposal in a Payment Request will be presumed to be reasonable for purposes of this Acquisition Agreement unless the Director of Public Works notifies Developer of the City's good-faith reasonable objection to the cost allocation proposal within 10 days after Developer delivers the Payment Request to the Director of Public Works.

(i) Soft costs that apply not only to the Privately-Owned Community Improvement but also Acquisition Facilities and Vertical Improvements, such as design fees and inspection and review fees, will be allocated to the related hard costs.

(ii) Whenever hard costs and soft costs apply to both Privately-Owned Community Improvements, Acquisition Facilities and Project costs that are not Qualified, such costs will be allocated between Project Costs that are Qualified and those that are not.

(c) Review Process. The process for review of the Payment Requests for Privately-Owned Community Improvements is subject to Article 6.

5.3 Payment.

(a) Processing of Payment Requests. Payment Requests for Privately-Owned Community Improvements shall be processed pursuant to Sections 4.2, 4.3 and 4.4(a) above.

(b) Maximum Reimbursement Amount. The total amount paid for any Privately-Owned Community Improvement must not exceed the lesser of the Actual Cost or value.

ARTICLE 6
PAYMENT REQUESTS GENERALLY; VESTING; COVENANTS

6.1 Application of Payment Requests.

(a) Each Payment Request will be numbered consecutively. Each Payment Request will be assigned the next available number when submitted to the Director of Public Works, pursuant to Section 4.2 and Section 5.3.

(b) Each Payment Request will identify the Development Phase in which the work is being conducted or to which the reimbursement is allocated and all the Identified Funding Sources that are eligible to be used to pay it.

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

(d) The City shall not satisfy a Payment Request out of any Funding Sources while Developer is in default in the payment of any ad valorem taxes or CFD special taxes levied on any parcel that it then owns or while Developer is in Default under the Development Agreement.

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

(f) Payment Requests may be paid: (i) in any number of installments as Identified Funding Sources become available; and (ii) irrespective of the length of time of such deferral of payment.

6.2 Partial Payments; Vested Payment Requests. If Identified Funding Sources are not sufficient to pay the full amount of a Payment Request, then the City will pay the Payment Request to the extent of available Identified Funding Sources and notify Developer of the amount of the remaining portion. The right to the payment of the remaining portion of the Payment Request from the Identified Funding Sources will vest in the payee of such Payment Request (the “**Vested Payment Request**”). Promptly following the availability of Identified Funding Sources, the City will, from time to time and in as many installments as necessary, pay any Vested Payment Request. The Vested Payment Request will be paid from such Identified Funding Sources to the payee of such Vested Payment Request in the chronological order of the number of the Payment Request. Unpaid Vested Payment Requests will be paid from the Identified Funding Sources in their relative order of priority under this Section 6.2 before Identified Funding Sources may be used for any other purposes under this Agreement regardless of: (a) the identity of the owner of any property in the Project Site at the time of the payment of the Vested Payment Request; (b) whether the payee under the Vested Payment Request is, at the time of payment, a Party or a party to the Development Agreement; and (c) whether the

Development Agreement has been terminated or assigned to or assumed by another Person. This Section 6.2 will survive termination of this Agreement and the Development Agreement.

6.3 Miscellaneous.

(a) Communications requesting additional information about and notices of approval or disapproval of a Supplement or a Payment Request or the insufficiency of Identified Funding Sources to pay an approved or Deemed Approved Payment Request in full may be made in any written form for which receipt may be confirmed, including facsimile, electronic mail, and certified first class mail, return receipt requested. Such communications will be effective upon receipt, or, if delivered after 5 p.m. or on a weekend or holiday, the next Business Day.

(b) All proposed Supplements and Payment Requests submitted to the Director of Public Works must be sent by certified first class mail - return receipt requested, personal delivery, or receipted overnight delivery. Payment Requests must be clearly marked: "Payment Request No. _____; Power Station; Attn: _____." Delivery of a Supplement or Payment Request to the Director of Public Works will be effective on the actual date of delivery, or, if delivered after 5 p.m. or on a weekend or holiday, the next Business Day. Copies of Payment Requests must be delivered in the same manner as the original.

(c) Except as provided in this Agreement, the City agrees that it will not withhold payment on any undisputed portion of a Payment Request, and that the City will be entitled to withhold payment only on a disputed portion of a Payment Request.

(d) In connection with processing any request under this Agreement (including Payment Requests and Supplements), the City agrees that any additional information request by the Director of Public Works to Developer must be submitted as soon as practicable following the submission of the original materials, but in any event prior to applicable deadlines required by this Agreement. The Director of Public Works will use its good faith efforts to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the Director of Public Works and its designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Developer. Developer represents and warrants to and for the benefit of the City that:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified to transact business and is in good standing in the State of California, is in compliance with the laws of such state, and has the

power and authority to own its properties and assets and to carry on its business as now being conducted.

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

7.2 Representations and Warranties of the City. The City represents and warrants to and for the benefit of Developer that:

(a) The City is a duly formed corporate body under the Constitution, the laws of the State of California and its charter, is in compliance with the Constitution, the laws of the State of California and its charter, and has the power and authority to own its properties and assets and to carry on its business as now being conducted.

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

ARTICLE 8 MISCELLANEOUS

8.1 Limited Liability of the City. Except as otherwise provided in the Development Agreement, Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City, and the City's obligations to make any payments under this Agreement to implement the Financing Plan are restricted entirely to available Funding Sources as provided in the Financing Plan and from no other source. Unless otherwise agreed to in writing by the parties, in no circumstances shall the City's credit, taxing power (other than to the limited extent described in this Agreement) or General Fund or any revenues other than the Funding Sources be pledged to or be available to pay all or any part of the Actual Cost of an Acquisition Facility, Components or a Privately-Owned Community Improvement. No member of the Board of Supervisors, or City staff member or employee will incur any liability under this Agreement to Developer in their individual capacities by reason of their actions under this Agreement or execution of this Agreement. It is understood and agreed that no commissioners, members, officers, or employees of the City (or of its successors or assigns) will be personally liable to Developer, nor will any officers, directors, shareholders, agents, or employees of Developer (or of its successors or assigns) be personally liable to the City in the event of any default or breach of this Agreement by the City or for any amount that may become due to Developer or the City, as the case may be, under this Agreement or for any obligations of the Parties under this Agreement.

8.2 Attorneys' Fees.

(a) Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party's reasonable costs and

expenses incurred including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys' fees and costs for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 8.2 shall include attorneys' fees on any appeal.

(b) For purposes of this Agreement, reasonable fees of a Party's in-house attorneys shall be no more than the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which such attorneys services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the applicable Party.

8.3 Notices. Except as provided in Sections 6.3(a) and (b), any notices to be provided under this Agreement must be delivered to the addresses and in the manner set forth in the Development Agreement.

8.4 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, as governed by the Development Agreement. This Agreement may be assigned only in connection with an assignment of the Development Agreement that is permitted in accordance with its terms.

8.5 Other Agreements. The obligations of Developer under this Agreement will be those of a Party and not as an owner of property in the Project Site. Nothing in this Agreement may be construed as affecting the City's or Developer's rights, or duties to perform their respective obligations under the Development Agreement and any Applicable Standards. If this Agreement creates ambiguity in relation to or conflicts with any provision of the Financing Plan, the Financing Plan will prevail.

8.6 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, will not constitute a waiver of such Party's right to later insist upon and demand strict compliance by the other Party with the terms of this Agreement. Deemed Approval of a Supplement or Payment Request will not constitute a waiver of the right of the City or the Director of Public Works, as applicable, to obtain information and documents that would have been required for a proposed Supplement or Payment Request to be complete.

8.7 Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or will be construed to confer upon or to give to any person or entity other than the City and Developer any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions, or stipulations of this Agreement; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City or Developer will be for the sole and exclusive benefit of the City and Developer, subject to Section 8.4.

8.8 Amendment. This Agreement may be amended from time to time by the written agreement of the City and Developer, including a Supplement, executed by the City and Developer or otherwise approved or Deemed Approved under Section 1.4. The Parties agree that changes to the forms of the Payment Requests as needed to make adjustments to clarify and

expedite the payment process under this Agreement are ministerial in nature and do not require an amendment to this Agreement.

8.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall become effective when the Parties have duly executed and delivered signature pages of this Agreement to each other. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

8.10 Interpretation of Agreement. Unless otherwise specified, whenever in this Agreement reference is made to any capitalized Article, Section, Exhibit, Attachment, Supplement or any defined term, the reference will mean the Article, Section, Exhibit, Attachment, Supplement or defined term in this Agreement. Any reference to an Article or a Section includes all subsections, clauses, and subparagraphs of that Article or Section. The use in this Agreement of the words “including”, “such as”, or words of similar import when following any general term, statement or matter will not be construed to limit the statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as “without limitation” or “but not limited to”, or words of similar import, is used. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions will prevail.

8.11 Numbers.

(a) Generally. For purposes of calculating a number under this Agreement, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

(b) Number of Days. References in this Agreement to days shall be to calendar days, unless otherwise specified; provided, that if the last day of any period to give notice, reply to a notice, meet a deadline or to undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

ARTICLE 9 DEFINITIONS

9.1 Definitions.

“**Acceptable Title**” means title to real property or interest in real property free and clear of all liens, taxes, assessments, leases, easements, and encumbrances, whether or not recorded, except for: (a) those determined not to interfere materially with the intended use of such real

property; (b) those required to satisfy the terms of the Development Agreement; and (c) if the lien is for any existing CFD, then the lien of the special taxes shall be a permitted exception to title so long as the real property, while owned by the City, is exempt from the special tax to be levied by the CFD.

“**Acceptance Date**” means the date that an action by the City to accept dedication of or transfer of title to an Acquisition Facility becomes final.

“**Acquisition Facilities**” means the Infrastructure, Parks and Open Spaces and Public Improvements that the Developer is required to construct under the Development Agreement shown in Exhibit A, as such exhibit may be amended or supplemented from time to time in accordance with the provisions of this Agreement.

“**Actual Cost**” means Qualified Project Costs of an Acquisition Facility, Component or Privately-Owned Community Improvement (which includes any applicable Developer Allocation or Agreed-Upon Allocation).

“**Agreed-Upon Allocation**” is defined in Section 4.3(b).

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

“**Applicable Standards**” is defined in the Development Agreement.

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

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

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

“**Business Day**” is defined in the Development Agreement.

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

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

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

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

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

“**Complete**” (or its variant “**Completion**” or “**Completed**”) is defined in the Development Agreement.

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

“Completion Confirmation” means, as the context requires, a Determination of Completion or a Notice of Component Completion issued by the Director of Public Works under Section 3.1(c) with respect to an Acquisition Facility or Component, respectively.

“Deemed Approved” or **“Deemed Approval”** means a Supplement or Payment Request that will be treated as approved in the form submitted for all purposes under this Agreement due to the expiration of any applicable review and approval periods provided in this Agreement, subject to the final sentence of Section 1.5(a) and Section 4.5.

“Default” is defined in the Development Agreement.

“Department of Public Works” is defined in Section 1.4.

“Determination of Completion” means a written notice from the Director of Public Works that an Acquisition Facility has been approved as inspected. The form of the written notice shall be the form customarily provided by the Director of Public Works to evidence the completion and approval of the inspection of a facility.

“Developer” is defined in the Development Agreement.

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

“Development Agreement” is defined in the Financing Plan.

“Development Phase” is defined in the Development Agreement.

“Director of Public Works” means the Director of Public Works of the City (or any successor officer designated by or under law) or the Director’s authorized designee, acting in that capacity under this Agreement.

“DRDAP” means the design review and document approval procedures for the Project Site attached to the Development Agreement as Exhibit E, as may be amended or supplemented from time to time.

“Effective Date” is defined in Section 1.1.

“Financing Plan” is defined in the Development Agreement.

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

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

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

“Indenture” is defined in the Financing Plan.

“Infrastructure” is defined in the Development Agreement.

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

“Non-City Responsible Agencies” is defined in the Development Agreement.

“Notice of Component Completion” means a written notice of the Director of Public Works that a Component has been approved as inspected. The form of the written notice shall be the form customarily provided by the Director of Public Works to evidence the completion and approval of the inspection of a facility with appropriate changes to reflect that the Director of Public Works is not accepting dedication or transfer of title to an Acquisition Facility of which the Component is a part.

“Parks and Open Spaces” is defined in the Development Agreement.

“Party” or **“Parties”** means, individually or collectively as the context requires, Developer and the City.

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

“Person” is defined in the Development Agreement.

“Plan Documents” is defined in the Development Agreement.

“Privately-Owned Community Improvements” is defined in the Development Agreement.

“Project” is defined in the Development Agreement.

“Project Costs” is defined in the Financing Plan.

“Project Site” is defined in the Development Agreement.

“Proof of Payment” means a cancelled check, a wire confirmation demonstrating delivery of a direct transfer of funds, an executed and acknowledged unconditional lien release, or other evidence approved by the City demonstrating payment of the applicable Actual Cost.

“Public Improvements” is defined in the Development Agreement.

“Qualified” is defined in the Financing Plan.

“Ready for Payment” means that the Acquisition Facility or Component is ready for its intended use and is completed in substantial conformity with the Development Agreement, Plan Documents and Applicable Standards and procedures, irrespective of the functionality of the larger system of which it is a part.

“Remainder Taxes” is defined in the Financing Plan.

“Remainder Taxes Project Account” is defined in the Financing Plan.

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

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

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

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

“Transferee” is defined in the Development Agreement.

“Vested Payment Request” is defined in Section 6.2.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:

Name:

Title:

Approved as to form:

DENNIS J. HERRERA,
City Attorney

By:

Name:

Deputy City Attorney

DEVELOPER:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

Description of Acquisition Facilities and Privately-Owned Community Improvements to be Financed for the Project

A. Acquisition Facilities

[to come]

B. Privately-Owned Community Improvements

[to come]

EXHIBIT B

**Description of Acquisition Facilities and Components and Privately-Owned Community
Improvements, with Cost Estimates**

[To be completed from time to time]

EXHIBIT C

Form of Payment Request – Acquisition Facilities and Components

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

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

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

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

Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
	Improvement Area No. 1 Bonds
	Remainder Taxes for Improvement Area No. 1
	Improvement Area No. 2 Bonds
	Remainder Taxes for Improvement Area No. 2
	Other Source (specify):
Total Actual Cost	

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

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

The amount of \$ _____ to the Developer by wire, according to the following _____ instructions:

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

10. Other relevant information about Payment Request: _____

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

DEVELOPER:

[insert name of Developer]

By: _____
Authorized Representative
of Developer

Date: _____

Attachments:

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

Conditional lien releases from the following: _____

- For Completed Acquisition Facility:** Copy of recorded conveyance of land
- For Completed Acquisition Facility:** Copy of Determination of Completion
- For Completed Acquisition Facility:** Original assignment of warranties and guaranties
- For Completed Acquisition Facility:** Original assignment of Plan Documents
- For Completed Acquisition Facility:** Original assignment of reimbursements from Third Parties payable with respect to the Acquisition Agreement
- For Completed Acquisition Facility:** As-built drawings of the Acquisition Facility
- Exhibit C-1
- Exhibit C-2

DEEMED APPROVAL NOTICE

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

if you fail to notify Developer that

this Payment Request is approved or disapproved

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

it will be Deemed Approved.

Payment Request Approved on _____.

By: _____
Director of Public Works

EXHIBIT C-1

Acquisition Facilities and Components to Which Payment Request Applies

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

DEVELOPMENT PHASE: _____

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

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

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

Attachments:

Approved Supplement(s) *(include proof of delivery if Deemed Approved)*

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

EXHIBIT C-2

Calculation of Actual Cost

PAYMENT REQUEST NO. _____
MADE ON BEHALF OF: _____

DEVELOPMENT PHASE: _____

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

Attachments – Complete Acquisition Facilities Only:

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

EXHIBIT D

Form of Payment Request – Privately-Owned Community Improvement

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

The undersigned hereby requests payment in the total amount of \$_____ for the Privately-Owned Community Improvements as described in Exhibit B to that certain Acquisition and Reimbursement Agreement between the City and County of San Francisco and California Barrel Company LLC, dated for reference purposes only as of _____ (the “Acquisition Agreement”), all as more fully described in Exhibit D-1. In connection with this Payment Request, the undersigned hereby represents and warrants to the Director of Public Works and the City as follows:

1. The undersigned is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth in this Payment Request.
2. The Privately-Owned Community Improvements for which payment is requested were constructed in accordance with the Development Agreement and inspected pursuant to Section 5.2(a)(i) of the Acquisition Agreement.
3. All costs of the Privately-Owned Community Improvements for which payment is requested hereby are Actual Costs, and have not been inflated in any respect, as indicated in the attached Proof of Payment. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.
4. The costs for which payment is requested are not the subject of dispute with any contractor, subcontractor, materialman, or other Person who supplied goods or labor, as evidenced by the attached conditional or unconditional lien releases.
5. Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.
6. The Actual Cost of each Privately-Owned Community Improvements (a detailed calculation of which is shown in Exhibit D-Privately-Owned Community Improvement), has been calculated in conformance with the terms of the Acquisition and Reimbursement Agreement.
7. To the knowledge of the undersigned, Developer is not delinquent in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special assessments levied on the regular County tax rolls against property owned by Developer in the Project Site.

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

Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
	Improvement Area No. 1 Bonds
	Remainder Taxes for Improvement Area No. 1
	Improvement Area No. 2 Bonds
	Remainder Taxes for Improvement Area No. 2
	Other Source (specify):
Total Actual Cost	

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

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

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

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

10. Other relevant information about Payment Request: _____

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

DEVELOPER:

[insert name of Developer]

By: _____

Authorized Representative
of Developer

Date: _____

Attachments:

Certificate of occupancy

Unconditional lien releases from the following: _____

 Conditional lien releases from the following: _____

 Documents required by Development Agreement

Exhibit D-1

Exhibit D-2

DEEMED APPROVAL NOTICE

**Under Article 5 of the Acquisition and Reimbursement Agreement,
if you fail to notify Developer that
this Payment Request is approved or disapproved
within thirty (30) calendar days after your receipt of this Payment
Request,
it will be Deemed Approved.**

Payment Request Approved on _____.

By: _____
Director of Public Works

EXHIBIT D-1

Privately-Owned Community Improvement to Which Payment Request Applies

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

DEVELOPMENT PHASE: _____

1. The Privately-Owned Community Improvements for which payment is requested under this Payment Request are: _____

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

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

Attachments:

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

EXHIBIT D-2

Calculation of Actual Cost

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

DEVELOPMENT PHASE: _____

1. Description (by reference to Exhibit B to the Acquisition and Reimbursement Agreement) of the Privately-Owned Community Improvements _____
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost, including any Developer Allocation): \$ _____