

DEPOSIT AND REIMBURSEMENT AGREEMENT

City and County of San Francisco
Special Tax District No. 2022-1
(Power Station)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement"), dated for convenience as of _____ 1, 2022, is by and between the City and County of San Francisco (the "City"), a charter city and municipal corporation, and California Barrel Company LLC, a Delaware limited liability company (the "Landowner").

RECITALS:

WHEREAS, the Landowner would like the City to consider taking actions necessary to form the captioned Special Tax District (the "Special Tax District") under Chapter 43, Article X of the San Francisco Administrative Code (as it may be amended from time to time, "Code"), which Code incorporates by reference the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the California Government Code (the "Act");

WHEREAS, the Landowner is willing to advance funds to the City or to its agents and consultants as necessary to ensure payment of any and all costs of the City in forming the Special Tax District, provided that any advances are reimbursed to the Landowner from the proceeds of any bonds issued by the City for the Special Tax District to the extent legally permissible;

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of the Special Tax District, the City may accept advances of funds and may provide, by resolution, for the use of those funds, including but not limited to pay any cost incurred by the local agency in creating the Special Tax District, and may agree to reimburse the advances under all of the following conditions: (1) the proposal to repay the advances is included both in the resolution of intention and the resolution of formation to establish the Special Tax District; and (2) any proposed special tax is approved by the qualified electors of the Special Tax District and, if the qualified electors of the district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election; and

WHEREAS, the City and the Landowner now desire to specify the terms of the advances of funds and reimbursement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

Section 1. The Advances. The Landowner hereby agrees to provide \$100,000, in the form of cash or a check payable to the City (the "Initial Advance"), to be used by the City to pay the "Initial Costs" (as defined below); the Initial Advance shall be delivered to the Director of the Office of Public Finance of the City prior to the execution of this Agreement by the City. The City, by its execution hereof, acknowledges receipt of the Initial Advance. The Initial Advance represents costs that the City and the Landowner have concluded are not being funded with other moneys provided by the Landowner.

The Landowner further agrees to advance any additional amounts (collectively with the Initial Advance, the "Advances") incurred or reasonably expected to be incurred by the City, promptly upon written demand therefore by the Director of the Office of Public Finance, said Advances to be made to the City or directly to the City's consultants as specified by the Director of the Office of Public Finance in writing to the Landowner. In the event that the Landowner shall fail or refuse to remit any such amounts to or at the direction of the Director of the Office of Public Finance, all processing by the City of the proceedings for the Special Tax District shall cease until such time as the requested amounts are paid by the Landowner.

The Initial Costs include, but are not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the Special Tax District (such as engineering, legal counsel, including special counsel to the City, financial advisory and special tax consultant); (ii) the costs of appraisals, absorption studies and other reports necessary or deemed advisable by City staff in forming the Special Tax District and issuing bonds for the Special Tax District; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the Special Tax District, any special tax to be levied therein or any bonded indebtedness thereof; (iv) the costs (including attorneys fees) of any action prosecuted in the superior court to validate the formation of the Special Tax District, said special tax and/or any bonded indebtedness; (v) the costs of any actions (including attorneys fees) challenging the formation of the Special Tax District; (vi) a reasonable charge, as determined by the Director of the Office of Public Finance, in her sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the Special Tax District formation, special tax formulation, facilities acquisition and bond issuance proceedings; and (vii) any and all other actual costs and expenses incurred by the City with respect to the creation of the Special Tax District.

Section 2. Use of Funds. Pursuant to Section 53314.9 of the Act, the Advances are subject to reimbursement only as follows:

(a) If the Special Tax District is formed and bonds are issued under the Code by the City secured by special taxes levied upon the land within the Special Tax District, the City shall provide for reimbursement to the Landowner, without interest, of all Advances, said reimbursement to be made solely from the proceeds of such bonds and

only to the extent otherwise permitted under the Code. On or within thirty (30) days after the date of issuance and delivery of the bonds, the Director of the Office of Public Finance shall return any then unexpended Advances to the Landowner, without interest, together with an amount equal to the Advances theretofore expended, without interest, to the extent such amount is funded with proceeds of the bonds and said reimbursement is otherwise permitted under the Code.

(b) If the qualified electors of the Special Tax District do not approve the proposed special tax to be levied on the property within the Special Tax District and the issuance of bonds by the City for the Special Tax District, the Director of the Office of Public Finance shall, within thirty (30) days of the confirmation of the election results by the City Council of the City, return any then unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs which have been incurred or committed, but not yet paid by the City from the Advances.

(c) If the election is successful and the Special Tax District is formed, but such bonds are not issued, the Director of the Office of Public Finance shall, within thirty (30) days after adoption of the resolution stating the intent of the City to terminate proceedings under the Code with respect to the issuance of bonds for the Special Tax District, return any then unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 above but have not yet been paid by the City.

Section 3. Reimbursement of Other Landowner Costs. Nothing contained herein shall prohibit reimbursement of other costs and expenses of the Landowner incurred in connection with the Special Tax District from the proceeds of such bonds. Any such reimbursement shall be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Code and otherwise provided for in the proceedings for the formation of the Special Tax District and the issuance of such bonds.

Section 4. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City, as provided in Section 53314.9(b) of the Act. The City shall in no event be liable hereunder other than to return any unexpended and uncommitted portions of any Advances as provided in Section 2 above and provide an accounting under Section 7 below. The City shall not be obligated to advance any of its own funds with respect to the establishment of the Special Tax District or for any of the other purposes listed in Section 1 hereof. No member of the City Council of the City or member, associate member, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. No Obligation to Form Special Tax District The provisions of this Agreement shall in no way obligate the City to form the Special Tax District or to take any action with respect thereto.

Section 6. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Accounting. The City shall use the Advances to pay Initial Costs promptly upon the receipt of invoices from consultants and professionals for Initial Costs, as such invoices shall have been reviewed and approved by the Director of the Office of Public Finance ("Director"), in consultation with the City Attorney, as necessary. The Director shall maintain copies of all invoices paid from the Advances in accordance with this Section.

The Advances may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records of the expenditure of the Advances. The City shall provide the Landowner with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement within thirty (30) days of receipt by the Director of the Office of Public Finance of a written request therefor submitted by an authorized officer of the Landowner. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be considered an Initial Cost.

Section 8. Indemnification. The Landowner hereby agrees to assume the defense of, indemnify and hold harmless the City, and each of its members, officers, employees and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the Landowner or any of its members, officers, employees, contractors or agents in connection with the establishment of the Special Tax District and the issuance of any bonds by the City for the Special Tax District. The City shall promptly notify the Landowner of any such claim, action or proceeding, and the City shall cooperate in the defense thereof. The obligations of the Landowner under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, its members, officers, employees or agents.

Section 9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

* * * * *

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first written above.

LANDOWNER:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO with
respect to the proposed City and County of San
Francisco Special Tax District 2022-1 (Power
Station)

By: _____

Name: _____

Its: _____