
**EIFD ACQUISITION AND FINANCING AGREEMENT
(POWER STATION)**

by and among

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

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

and

**SAN FRANCISCO
ENHANCED INFRASTRUCTURE FINANCING DISTRICT NO. 1
(POWER STATION),
a legally constituted governmental entity**

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- Exhibit A Description of EIFD Improvements to Be Financed for the Project
- Exhibit B Description of EIFD 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 Facilities and Components
- Exhibit D-1 Privately-Owned Facilities and Components to Which Payment Request Applies
- Exhibit D-2 Calculation of Actual Cost
- Exhibit E Contracting Provisions in the Development Agreement
- Exhibit F Potential Change of Work form

EIFD ACQUISITION AND FINANCING AGREEMENT (POWER STATION)

This EIFD ACQUISITION AND FINANCING AGREEMENT (POWER STATION) (including any Supplement, this “**Agreement**”), dated for reference purposes only as of _____, 2024, is by and among City, EIFD, 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 the EIFD Law, the City agrees to acquire and reimburse the Actual Costs of Qualified EIFD Improvements; Qualified EIFD Improvements include both Acquisition Facilities and Privately-Owned Facilities that are of community-wide significance.

Under the Development Agreement and Chapter 43, Article X of the San Francisco Administrative Code, the City, and the Developer are concurrently entering into the CFD Acquisition and Reimbursement Agreement under which the City agrees to acquire authorized improvements and reimburse Qualified Project Costs (as defined therein). Many of the EIFD Improvements eligible to be funded by EIFD Funding Sources pursuant to this Agreement are also eligible to be funded by CFD Funding Sources pursuant to the CFD Acquisition and Reimbursement Agreement. For those facilities that are eligible to be financed by both the EIFD and the CFD, the Developer may utilize either or both of the CFD Funding Sources and the EIFD Funding Sources to finance such facilities, provided that the same costs are not financed by both sources (i.e., no double-dipping). In requisitioning for the reimbursement of Actual Costs of EIFD Improvements that may be financed by both the EIFD and the CFD, the Developer may identify both EIFD Funding Sources and CFD Funding Sources as potential sources of funding (i.e., the Developer does not have to specify the source of reimbursement until such time as EIFD Funding Sources and/or CFD Funding Sources are available to satisfy the applicable Payment Request).

B. Purpose of this Agreement. In accordance with the EIFD Law and the IFP, this Agreement describes the procedures by which, at Developer’s request, (i) the City will acquire Acquisition Facilities and verify the related Actual Costs and (ii) the City will verify the Actual Costs of Privately-Owned Facilities and Components to be reimbursed to the Developer, and (iii) the EIFD will pay the Actual Costs of Acquisition Facilities and reimburse the Actual Costs of Privately-Owned Facilities and Components with the EIFD Funding Sources. The City has allocated Allocated Tax Revenue and Conditional Tax Revenue to the EIFD for the purposes specified in the IFP. Under the EIFD Law, the sole purpose of the EIFD is to finance the public facilities and other projects specified in the IFP.

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

(1) Developer may construct EIFD Improvements before EIFD Bond proceeds and Allocated Tax Revenue (together, “**EIFD Funding Sources**”) that will be used to acquire them or pay the Actual Costs of related Qualified EIFD Improvements, as applicable, are available.

(2) The City shall inspect such improvements and process Payment Requests even if EIFD 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 or other Governmental Entity may be conveyed to and accepted by the City or other Governmental Entity before the applicable Payment Requests are paid in full. Likewise, Privately-Owned Facilities 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 by the EIFD when sufficient EIFD Funding Sources become available, whether or not at such time the City, or other Governmental Entity, or other Person has accepted the relevant improvements, and such payments may be made: (A) in any number of installments as EIFD 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 or any other Governmental Entity, prior to formal acceptance by the City or the Governmental Entity of the Acquisition Facility that are the subject of such Payment Requests.

(5) Developer’s conveyance or dedication of Acquisition Facilities to the City or other Governmental Entity before the availability of EIFD 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 Facilities to the applicable Person before the availability of EIFD Funding Sources to reimburse for such Privately-Owned Facilities is not a dedication or gift or a waiver of Developer’s right to payment of such Privately-Owned Facilities 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, the EIFD, and the City hereby agree as follows:

ARTICLE 1 FUNDING

1.1 Use of EIFD Funding Sources. This Agreement: (a) implements (and is subject to all limitations of) the allocation by the City to the EIFD of the Allocated Tax Revenue and the authorized use by the EIFD of the Allocated Tax Revenue, each as set forth in the IFP; (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 EIFD will use available EIFD Funding Sources to make payments to Developer for the Actual Costs of the EIFD Improvements.

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 EIFD Funding Sources under this Agreement. 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 Facilities. 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 Facilities.

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 Facilities for which construction contracts have been executed, and the estimated Actual Costs that are to be reimbursed under this Agreement. Exhibit B shall initially include all Qualified EIFD Improvements that are the subject of construction contracts executed as of the Effective Date of this Agreement and their estimated Actual Costs. Exhibit B shall include costs specific to Acquisition Facilities and Privately-Owned Facilities based on an executed contract or permit (e.g., street improvement permit, demolition permit, building permit et al.) and all other estimated Actual Costs of the Acquisition Facilities and Privately-Owned Facilities that may or may not be subject to a construction contract, with an explanatory note as to which estimated Actual Costs are not subject to a construction contract and how the related work will be performed. The City and County of San Francisco Department of Public Works (the “**Department of Public Works**”) will be the lead City agency to facilitate coordinated review of the Project in accordance with the MOU and will assist the City as provided under this Agreement. With respect to Qualified EIFD Improvements other than Inclusionary Units and 100% Affordable Housing Projects, the Department of Public Works will be the lead City agency responsible for review and verification of the Actual Costs of Acquisition Facilities (or Components thereof) or Privately-Owned Facilities (or Components thereof) listed in Exhibit B in accordance with the MOU, and MOHCD will be responsible for the review and verification of the Actual Costs of Inclusionary Units and 100% Affordable Housing Projects. Upon completion of its review, MOHCD will submit to the Department of Public Works a written summary of its review and evaluation signed by the MOHCD Director (or his designee); no further review shall be required by MOHCD in connection with the submission by the Developer of a Payment Request related to Inclusionary Units and 100% Affordable Housing Projects as long as the Payment Request is consistent with the Third Party cost certification or audit provided pursuant to Section 5.3(c)(iv) hereof. The parties understand and agree that any costs identified on Exhibit B are estimates only and shall not limit the payment of the Actual Costs in any way (i.e., such amounts are not budgets, but only estimates).

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 all or any portion of the Acquisition Facilities set forth on Exhibit A for which construction contracts have been executed, including the identification and detail of any Components of the Acquisition Facilities; (b) provide estimates of the Actual Costs of all or any portion of the Acquisition Facilities set forth on Exhibit A for which construction contracts have been executed, including of any Components thereof; (c) describe and provide detail on all or any portion of the Privately-Owned Facilities set forth on Exhibit A for which construction contracts have been executed, including the identification and detail of any Components of the Privately-Owned Facilities (other than affordable housing); (d) provide estimates of the Actual Costs of all or any portion of the Privately-

Owned Facilities for which construction contracts have been executed, including of any Components thereof; and (e) otherwise update or modify any other information in Exhibit B. The Parties agree that the EIFD will not be obligated to pay Developer for the Actual Costs of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) under this Agreement unless such Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) is set forth on Exhibit B.

1.4 Review and Approval of Supplements. The Department of Public Works will review and verify the Actual Costs of Acquisition Facilities (or Components thereof) or Privately-Owned Facilities (or Components thereof) other than Inclusionary Units and 100% Affordable Housing Projects contained in any Supplements submitted under this Agreement, and MOHCD will review and verify the Actual Costs of Inclusionary Units and 100% Affordable Housing Projects contained in any Supplements submitted under this Agreement, in each case subject to the following:

(a) Upon Developer's written request, the Department of Public Works or MOHCD, as applicable, 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 or MOHCD, as applicable, will make reasonable efforts to accept or object in writing to all or any portion of the proposed Supplement within thirty (30) calendar days after receipt of a proposed Supplement submitted with Developer's written request for review and approval. Developer may resubmit any proposed Supplement to which the Department of Public Works or MOHCD, as applicable, has timely objected, and the Department of Public Works or MOHCD, as applicable, 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).

(b) The Department of Public Works or MOHCD, as applicable, 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, Section 1.3 or Section 1.4, as applicable, and any supporting materials reasonably requested in writing by the Department of Public Works or MOHCD, as applicable, in connection with the proposed Supplement. Proposed Supplements for Inclusionary Units and 100% Affordable Housing Projects shall, in addition to the information set forth in Section 1.3, include as supporting materials (i) an estimate of proposed sources and uses, (ii) copies of any applications submitted for local, State or Federal grant or loan financing, (iii) a copy of (A) the Notice of Special Restrictions and (B) if the Notice of Special Restrictions does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law, and (iv) the most detailed currently available set of building Plans. Proposed Supplements for 100% Affordable Housing Projects shall also include as supporting material a copy of the Affordable Housing Conveyance Agreement and an estimate of projected operating cash flow at stabilization. The Supplement Review Period will be tolled as to a Supplement for which the Department of Public Works or MOHCD, as applicable, has reasonably requested additional information or materials, until such requested information or materials have been provided to the Department of Public Works or MOHCD, as applicable. Within the Supplement Review Period, as it may be tolled under this Section 1.4(b), the Department of Public Works or MOHCD, as applicable, will send a notice of Approval or disapproval to Developer. Any notice of disapproval must state with specificity the Department of

Public Works' or MOHCD's, as applicable, 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 Facility is not contemplated to be financed by the Development Agreement (including the Financing Plan); or (B) a proposed Acquisition Facility or Privately-Owned Facility is not eligible to be financed under the IFP, the Governing Acts, the Development Agreement, or this Agreement.

(ii) For disapproval of a proposed Supplement to Exhibit B: (A) the specified Acquisition Facilities or Privately-Owned Facilities are not listed on Exhibit A; (B) the specified Inclusionary Units or 100% Affordable Housing Projects do not comply with the Housing Plan or Section 5.5 of this Agreement; (C) the Actual Costs (less Third Party Reimbursements) of the specified Inclusionary Units or 100% Affordable Housing Project exceed the amounts set forth in the project completion audit or cost certification required by Section 4.2(d); (D) the Actual Cost, including any costs allocated pursuant to Section 5.3(d), of the specified Inclusionary Units exceeds the cost of an equal number of market rate units within the same mixed-income residential building; or (E) specified Components are not components of the Acquisition Facilities or Privately-Owned Facilities listed on Exhibit A.

(c) Any proposed Supplement 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.

(d) In addition to the requirements set forth in this Section 1.4, the Department of Public Works and Developer agree to form a Review Panel consisting of up to three members from the City (including its project managers from the Department of Public Works and the Office of Economic and Workforce Development), and up to three members from the Developer (including its construction manager(s)). Each of the Developer and the Public Works Director may invite representatives of MOHCD to participate in weekly working meetings. The purpose of the Review Panel is to conduct (up to) weekly working meetings to review, before they are submitted to the Department of Public Works or MOHCD, as applicable, proposed Exhibit B Supplements and any proposed change orders. The Review Panel will use good faith efforts to resolve issues with proposed Exhibit B Supplements and change orders before they are submitted to the Department of Public Works or MOHCD, as applicable, and conduct well-organized review meetings. In addition, if requested to do so by Developer, the Review Panel shall discuss any failures of the City described in Section 8.2 and use good faith efforts to resolve any existing failures and avoid future failures.

1.5 EIFD Funding Sources.

(a) The EIFD will not be obligated to pay all or any part of the Actual Cost of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) under this Agreement except from EIFD Funding Sources or any other sources that are mutually agreed to by the City, the EIFD, and Developer. Except for the Allocated Tax Revenue and the Conditional Tax Revenue (to the limited extent described in the IFP) that the City has allocated to the EIFD pursuant to the EIFD Law, unless otherwise agreed to in writing by

the parties, in no circumstances shall the City's General Fund, credit, taxing power or revenues other than the EIFD Funding Sources be pledged or be available to pay all or any part of the Actual Cost of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof), nor shall the EIFD have any liability to pay all or any part of the Actual Cost of an Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) if the Acquisition Facility (or Component thereof) or a Privately-Owned Facility (or Component thereof) is determined by the City to be ineligible to be financed under the Governing Acts, even if the City or the Department of Public Works or MOHCD, as applicable, did not object to the Payment Request or Supplement listing it on the grounds of ineligibility.

(b) Developer acknowledges that if the City, the EIFD, and Developer agree to issue escrow bonds as part of an issuance of EIFD Bonds and funds are deposited in an escrow fund, escrowed amounts will become EIFD 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 EIFD 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) Neither the City nor the EIFD make any warranty, express or implied, that EIFD Funding Sources will be sufficient to pay for all of the EIFD Improvements. Other than as contemplated by the EIFD Funding Sources or as otherwise agreed to in writing by the parties, in no circumstances shall the City's credit, taxing power or General Fund or any revenues other than the EIFD Funding Sources be pledged to or be available to pay all or any part of the Actual Cost of the EIFD Improvements.

1.6 Issuance of EIFD Bonds.

(a) EIFD Bonds will not be issued by the EIFD except upon the written request of the Developer made to the EIFD and the City. The proceeds of each series of EIFD Bonds shall be deposited, held, invested, reinvested, and disbursed as provided in the Indenture, subject to compliance with the IFP and this Agreement. Other than payment of EIFD administrative costs, the net proceeds of the EIFD Bonds (after paying costs of issuance and capitalized interest and establishing debt service reserve funds) shall be used to finance the Actual Cost of EIFD Improvements.

(b) The City shall allocate the Conditional Tax Revenue to the EIFD to provide debt service coverage for the EIFD Bonds, and the Conditional Tax Revenue will only be available for the limited purpose of paying debt service on the EIFD Bonds and replenishing any reserve funds for the EIFD Bonds in the event that Allocated Tax Revenue is insufficient for that purpose. After first paying or setting aside amounts needed for debt service due during such Fiscal Year on the EIFD Bonds secured by or payable from Allocated Tax Revenue and replenishing any reserve funds for the EIFD Bonds, the EIFD shall repay the City out of the Allocated Tax Revenue for any Conditional Tax Revenue actually used to pay debt service on EIFD Bonds as set forth in the IFP, plus interest as provided herein. After the Conditional Tax Revenue so used is repaid in full, then any Allocated Tax Revenue remaining shall be reserved for and/or applied to finance the Qualified EIFD Improvements.

(c) Prior to requesting the issuance of EIFD Bonds, the Developer will consult with the City's Controller (or the Controller's designee). The Controller will recommend that the Board of Supervisors approve an issue of EIFD Bonds if the Controller has determined that (1) the issue will be consistent with sound municipal financing practices, (2) the issue will be consistent with the EIFD Law, the IFP and the Financing Plan, and (3) the City is assured, to its reasonable satisfaction, based on actual and projected reasonably foreseeable economic conditions that could have an impact on the assessed value of the property in the EIFD, that the EIFD Bonds are structured in a manner that (A) mitigates any potential material risk that the EIFD could default in the payment of debt service on the EIFD Bonds and (B) provides reasonable assurance to the City that the Conditional Tax Revenue would likely to be available to the City's General Fund and unlikely to be needed to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds.

(d) The Board of Supervisors will consider all requests to approve the issuance of EIFD Bonds in accordance with its customary practices based on the record before it, which shall include the Controller's recommendation and a description of the requirements of the Financing Plan.

(e) In addition to federally tax-exempt EIFD Bonds, at the request of the Developer, the EIFD shall consider the issuance of one or more series of federally taxable EIFD Bonds to finance the Actual Cost of any EIFD Improvements that cannot be financed on a federally tax-exempt basis.

(f) Upon any such request by the Developer to issue EIFD Bonds, the EIFD shall utilize and consult with the City's Office of Public Finance as to the timing, parameters, and terms of any EIFD Bonds consistent with this Agreement. The City has informed the EIFD and the Developer that the Office of Public Finance will provide those services to the EIFD for the term of the EIFD.

1.7 Deposits of EIFD Funding Sources.

(a) The proceeds of any EIFD 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 EIFD Bonds that is used to fund reserves for debt service, to capitalize interest on the EIFD Bonds, and to pay costs of issuance and administration will not constitute EIFD Funding Sources.

(b) Pursuant to the Financing Plan and the IFP, the Allocated Tax Revenue generated from the property in the EIFD may be deposited and held in, and invested, reinvested, and disbursed to finance EIFD Improvements.

(c) Developer agrees that the EIFD alone will direct the investment of EIFD Funding Sources in accordance with the EIFD's investment policy and all applicable laws and the applicable Indenture. The EIFD will have no responsibility to Developer with respect to any investment of EIFD 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 so long as the investments were made in accordance with the EIFD's investment policy and all

applicable laws and the applicable Indenture, even if a loss diminishes the amount of available EIFD Funding Sources.

1.8 Payment of Certain Costs. The City, the EIFD, and Developer agree that certain professional and consulting costs that Developer, the City and the EIFD incur in connection with the formation of the EIFD and the issuance of EIFD Bonds will be financed with proceeds of the EIFD Bonds or Allocated Tax Revenue to the extent permitted by the EIFD Law.

ARTICLE 2 CONSTRUCTION OF ACQUISITION FACILITIES AND PRIVATELY-OWNED FACILITIES

2.1 Plan Documents. Developer will prepare and obtain approval by each applicable Governmental Entity of all Plans for the Acquisition Facilities and Privately-Owned Facilities 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 Facilities. Developer's obligation to construct the Acquisition Facilities and the Privately-Owned Facilities is governed by the Development Agreement. This Agreement does not create an obligation to construct any Acquisition Facility or Privately-Owned Facility. This Article 2 applies only to those Acquisition Facilities or Privately-Owned Facilities 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 (or Component thereof) and reimbursement of the Actual Costs of Privately-Owned Facilities (or Component thereof) from time to time from EIFD Funding Sources and is not intended as a public works contract. The Parties acknowledge and agree that the Acquisition Facilities and Privately-Owned Facilities 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 or Privately-Owned Facilities. The City, the EIFD, 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 or Privately-Owned Facilities. 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. Notwithstanding the foregoing, the Developer acknowledges that EIFD Funding Sources can only pay for the Actual Costs of Acquisition Facilities or Privately-Owned Facilities where prevailing wages were paid.

(b) Developer will utilize its business judgment to solicit proposals and award contracts in the manner it deems most suited to achieving the lowest Actual Costs from qualified and responsible contractors for each EIFD Improvement. Such methods may vary depending upon the nature of the work and the EIFD Improvement and may include the solicitation of competitive bids from qualified contractors for hard costs. Developer agrees to award all

contracts and execute all contract change orders for construction of the Acquisition Facilities and Privately-Owned Facilities in accordance with the Development Agreement requirements, which are set forth in Exhibit E attached hereto. Developer agrees to provide copies of all executed contracts and contract change orders to the Department of Public Works or MOHCD, as applicable, along with a written summary of the process by which the Developer solicited proposals and awarded contracts.

(c) Developer shall be responsible for entering into all change orders required for the construction of the EIFD Improvements. Developer shall make reasonable efforts to submit change work order documentation to the Review Panel created pursuant to Section 1.4(d) accompanied by a Potential Change of Work (“PCOW”) form to confirm funding eligibility and to obtain City acknowledgment prior to implementing changes. The City shall make reasonable efforts to review the PCOW for courtesy concurrence within five (5) business days, but such review and courtesy concurrence shall not constitute an approval for reimbursement. The form of PCOW is attached hereto as Exhibit F. The parties acknowledge that Developer may under certain circumstances need to cause the contractor to commence implementing such changes in the field prior to the review of the PCOW by the Review Panel; in such event, the Developer shall submit the change work order documentation accompanied by a PCOW to the City immediately after the work has commenced for courtesy concurrence by the City within five (5) business days (which courtesy concurrence shall not constitute an approval for reimbursement). To the extent that a PCOW has been submitted and acknowledged by the Review Panel, the Developer shall submit a copy of such PCOW when requisitioning for the Actual Costs of the work that was the subject of the PCOW.

(d) From time to time at the request of the City, representatives of Developer must meet and confer with the City, Department of Public Works staff and MOHCD staff, as applicable, consultants, and contractors regarding matters arising under this Agreement with respect to the Acquisition Facilities or Privately-Owned Facilities, and the progress in constructing and acquiring the same, and as to any other matter related to the Acquisition Facilities or Privately-Owned Facilities, or this Agreement. The City, Department of Public Works staff and MOHCD staff, as applicable, 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 and Privately-Owned Facilities; 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 and Privately-Owned Facilities.

Developer will not enter into contracts for Acquisition Facilities or Privately-Owned Facilities with suspended or debarred contractors. A current list of such contractors can be found on the City’s website: <https://sf.gov/resource/2022/suspended-and-debarred-contractors#>. In addition, Developer will, to the extent it is legally permitted to and may do so without penalty to the Developer, terminate contracts for Acquisition Facilities or Privately-Owned Facilities with contractors that were suspended or debarred after the contracts were executed. City will not approve financing for costs of Acquisition Facilities or Privately-Owned Facilities where the work was performed by a suspended or debarred contractor to the extent work was performed after the contractor was suspended or debarred and it was legally permitted for the Developer to terminate the contract without penalty to the Developer.

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 EIFD. Except as otherwise provided in this Agreement, the EIFD will not 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 Facilities.

ARTICLE 3
ACQUISITION AND PAYMENT OF ACQUISITION FACILITIES AND COMPONENTS

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. This Article 3 does not apply to Privately-Owned Facilities or Components thereof. The City and the Developer agree that nothing in this Agreement is intended to supersede or replace the process of construction, inspection and acceptance of the Acquisition Facilities set forth in any applicable Public Improvement Agreement.

(b) Except as set forth in Section 3.3, the EIFD will not be obligated to pay the Actual Costs of Acquisition Facilities or Components under this Agreement to Developer until the applicable Acquisition Facility or Component has been inspected and determined in writing by the Director of Public Works to be Ready for Payment. Subject to Section 3.3 herein, 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" (as such term is used in the definition of "Ready for Payment") means only that the Component has been constructed in accordance with the applicable Plans 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 make a reasonable effort to 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**"). Within the five (5) Business Days time period discussed above, the applicable City agencies will make a reasonable effort to schedule the requested inspection to occur within fourteen (14) calendar days but in any event not to exceed twenty-one (21) calendar days from the date of receipt of the Inspection Request. Within five (5) Business Days following the completion of the inspection, the Director of Public Works shall notify Developer and the EIFD of the results of the inspection by providing an Acquisition Facility 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 or other Governmental Entity(ies), and the EIFD agrees to use available EIFD Funding Sources to pay the Actual Cost of the Acquisition Facilities and Components to Developer, subject to this Agreement and the Financing Plan.

3.3 Component Financing.

(a) This Agreement 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 Department of Public Works. Subject to the availability of EIFD Funding Sources, the City agrees to pay to Developer the Actual Costs 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 or other Governmental Entity of title to the Acquisition Facility and the property underlying the 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 Supplement).

(b) If the estimated cost of an Acquisition Facility exceeds one million dollars (\$1,000,000), this Agreement authorizes the purchase of Components whether or not the Components are capable of serviceable use. Subject to the availability of EIFD Funding Sources, the EIFD agrees to pay to Developer the Actual Costs 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 or other Governmental Entity 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 Supplement). As used in this Agreement, the term Component means:

- (i) segments of Acquisition Facilities (e.g., a segment of a water line);
- or
- (ii) incremental completion of an Acquisition Facility (i.e., progress payments).

(c) Payment of Soft Costs. Soft costs may be paid as part of the Actual Cost of any Component. In addition, soft costs for more than one Acquisition Facility may be submitted for approval as they occur in advance of construction of such Acquisition Facility provided that the soft costs apply to an Acquisition Facility or Component listed in Exhibit A or Exhibit B.

(d) Developer acknowledges that the City or other Governmental Entity, as applicable, 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 and EIFD acknowledge that a

Component does not have to be accepted by the City or other Governmental Entity as a condition precedent to the payment of the Actual Costs of the Component.

(e) 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 Plans and the Applicable Standards and such finding is made: (a) prior to payment of the Actual Costs of such Acquisition Facility or Component, the EIFD 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 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. Except as set forth in Section 5.4 herein, this Article 4 does not apply to Privately-Owned Facilities (or Components thereof).

(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 Identified Funding Sources that are eligible to be used to pay it, together with all required supporting documents, attachments, and exhibits, all in an organized manner. Required attachments include:

(i) a copy of the Acquisition Facility 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) In addition to those items listed in Section 4.1(a) above, any Payment Request for a Component must be supported by the following documentation:

(i) a completed copy of Exhibit C-1 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) In addition to those items listed in Section 4.1(a) above, any Payment Request for a Completed Acquisition Facility or the final Component thereof 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 or other Governmental Entity at the time of the request, a copy of the recorded document(s) conveying Acceptable Title to the real property to the City or other Governmental Entity, as applicable;

(ii) a copy of the Acquisition Facility Completion Confirmation or, if applicable, similar evidence that the Governmental Entity has found the Acquisition Facility to be Complete;

(iii) an executed assignment of any warranties and guaranties for the Acquisition Facility, in a form acceptable to the City or other Governmental Entity, as applicable;

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

(v) 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

(vi) 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 in writing 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 (which shall be subject to review in accordance with Section 4.3(b)), 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, subject to Section 3.1;

(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

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

(e) Acceptance by the City or other Governmental Entity of an Acquisition Facility or Component is not a condition to the payment of the Actual Cost of such Acquisition Facility or Component. Payment of the Actual Cost of an Acquisition Facility or Component shall not constitute Acceptance by the City or other Governmental Entity of such Acquisition Facility or Component

4.2 Processing Payment Requests for Acquisition Facilities and Components.

(a) Within twenty-one (21) 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 of Public Works to complete the review. 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. In reviewing a Payment Request, the Director of Public Works will also review the Developer Allocations. If the Director of Public Works objects 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**”).

(b) Within thirty (30) calendar days after the date a Payment Request is determined 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 return the Payment Request to Developer who may amend it to remove the portion that was disapproved and then resubmit it for approval. Upon receipt of the revised Payment Request omitting the disapproved portion, the Director of Public Works will forward the Payment Request to the EIFD for payment under Section 4.3. Developer may resubmit the portion of any Payment Request that was disapproved 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 twenty-one (21) calendar days, although the Director of Public Works will make a reasonable effort to review it more quickly.

(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 as to any Payment

Request, until Developer has provided any additional information or documentation that the Director of Public Works has reasonably requested under Section 4.2(a) or Section 4.2(b).

(d) The City will hire one or more Third Party consultants to review Payment Requests for Acquisition Facilities and Privately-Owned Facilities other than Inclusionary Units or 100% Affordable Housing Projects. For Payment Requests related to Inclusionary Units or 100% Affordable Housing Projects, the Developer will hire one or more qualified certified public accounting or other accounting firms that are licensed in the State of California to prepare project completion audits or cost certifications evidencing all Actual Costs incurred and Third Party Reimbursements received. The costs (which may include the City's bond counsel) associated with the Developer's preparation and City's review of Payment Requests submitted pursuant to this Agreement shall be payable from EIFD Funding Sources.

(e) The process for review of the Payment Requests for Acquisition Facilities and Components thereof is subject to Article 6.

4.3 Payment.

(a) Within five (5) Business Days after (i) approving a Payment Request, and (ii) receipt of the Acquisition Facility Completion Confirmation, the Director of Public Works will forward the counter-signed approved Payment Request to the EIFD.

(b) The EIFD must pay the Actual Costs to the extent of available Identified Funding Sources within fifteen (15) Business Days after the EIFD's receipt of a counter-signed approved Payment Request. At the written request of Developer, the EIFD will make payments under any 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) Subject to Section 4.4(d), the City will withhold delivery of the counter-signed Payment Request for the 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 or other Governmental Entity, if required under Section 4.1(c). Although Acceptable Title must be conveyed, acceptance by the City or other Governmental Entity is not required as a condition of signing a Payment Request.

(b) Subject to Section 4.4(d), the City may withhold delivery of the counter-signed Payment Request for the 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; and (ii) general lien releases for the Acquisition Facility (conditioned solely upon payment from EIFD Funding Sources to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works.

(c) 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 Port for any losses sustained by the City or the Port 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.

(d) The City will be entitled to withhold from each payment of Actual Costs 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 unless the Developer has provided evidence to the City that it is withholding from each payment to the contractor a retention of at least 10%. The City will be obligated to authorize the EIFD to pay the amount of any retained amounts in accordance with applicable City policies and procedures.

ARTICLE 5 INSPECTION AND PAYMENT REQUESTS FOR PRIVATELY-OWNED FACILITIES AND COMPONENTS

5.1 Inspection; Authorized Payments. This Article 5 applies only to Privately-Owned Facilities and Components thereof for which Developer seeks reimbursement under this Agreement. For Privately-Owned Facilities and Components, the Director of Public Works, the Department of Building Inspection, and the Port, as applicable, will make a reasonable effort to arrange for the inspection to commence within five (5) Business Days following receipt of Developer's written request to inspect Privately-Owned Facilities or Components that Developer believes in good faith are Ready for Private Payment (the "**Private Inspection Request**"). Within the five (5) Business Days time period discussed above, the applicable agency will make a reasonable effort to schedule the inspection to occur within fourteen (14) calendar days but in any event not to exceed twenty-one (21) calendar days from the date of receipt of the Private Inspection Request. Within five (5) Business Days following the completion of the inspection, the Director of Public Works, the Department of Building Inspection, or the Port, as applicable, shall notify Developer and the EIFD of the results of the inspection by providing a Private Completion Confirmation or by providing a punch list of items to be corrected.

5.2 Component Financing. This Section 5.2 shall only apply to Privately-Owned Facilities that are not affordable housing; The EIFD and the City will not finance Components of Inclusionary Units or 100% Affordable Housing Projects.

(a) If the estimated cost of a Privately-Owned Facility exceeds one million dollars (\$1,000,000), this Agreement authorizes the payment of the Actual Cost of

Components of that Privately-Owned Facility whether or not the Components are capable of serviceable use. Subject to the availability of EIFD Funding Sources, the EIFD agrees to pay to Developer the Actual Costs of such Components under this Section 5.2(a) before: (i) completion of the Privately-Owned Facility of which the Component is a part (unless it is the final Component of a Privately-Owned Facility); or (ii) the transfer to the owner of title to the Privately-Owned Facility and the property underlying the Component. A reasonably detailed description and estimated Actual Cost of each Component to be financed under this Section 5.2(a) must be listed on Exhibit B (either originally or through an approved Supplement). As used in this Agreement, the term Component means:

(i) segments of Privately-Owned Facilities; or

(ii) incremental completion of a Privately-Owned Facility or Component (i.e., progress payments).

(b) Payment of Soft Costs. Soft costs may be paid as part of the Actual Cost of any Component. In addition, soft costs for more than one Privately-Owned Facility may be submitted for approval as they occur in advance of construction of such Privately-Owned Facility provided that the soft costs apply to a Privately-Owned Facility or Component listed in Exhibit A or Exhibit B.

(c) The City and EIFD acknowledge that a Component does not have to be accepted by the owner as a condition precedent to the payment of the Actual Costs of the Component.

5.3 Processing Payment Requests for Privately-Owned Facilities and Components.

(a) To initiate the process for payment for a Privately-Owned Facility or Component thereof, 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) a copy of the Private Completion Confirmation; and

(ii) Proof of Payment evidencing the Actual Costs were previously incurred and, if applicable, paid for the Privately-Owned Facility.

(b) In addition to those items listed in Section 5.3(a) above, any Payment Request for a Component must be supported by the following documentation:

(i) a completed copy of Exhibit D-1 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) In addition to those items listed in Section 5.3(a) above, a Payment Request for a Completed Privately-Owned Facility or the final Component will be complete only after Developer has submitted all of the following documents, to the extent applicable:

(i) a copy of the Private Completion Confirmation or, if applicable, similar evidence that the Governmental Entity has found the Privately-Owned Facility to be Complete;

(ii) with regard to Privately-Owned Public Open Spaces (as defined in the Development Agreement), a Declaration of Public Open Space Covenants and Restrictions recorded in accordance with the Public Improvement Agreement and Exhibit L-2 to the Development Agreement;

(iii) with regard to Inclusionary Units and 100% Affordable Housing Projects, (A) a Notice of Special Restrictions recorded in accordance with Exhibit D (Housing Plan) to the Development Agreement and (B) if the Notice of Special Restrictions does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law;

(iv) with regard to Inclusionary Units and 100% Affordable Housing Projects, the project completion audit or cost certification required by Section 4.2(d), evidencing all Actual Costs incurred and Third Party Reimbursements received;

(v) with regard to Inclusionary Units and 100% Affordable Housing Projects, the final United States Internal Revenue Service Form 8609, if Low Income Housing Tax Credits are used to finance the Inclusionary Units or 100% Affordable Housing Projects; and

(vi) 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 Facility or Component thereof, in each instance unconditionally or conditionally waiving all lien and stop notice rights with respect to the pending payment.

(d) Cost Allocation. Developer will provide its Developer Allocation that is included in the calculation of the Actual Cost in Exhibit D-2 to each Payment Request under this Article 5, showing how Developer has allocated the following costs paid or incurred by Developer (as applicable):

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

(ii) costs that apply to both Privately-Owned Facilities or Components and other improvements (e.g., grading, or in a residential building containing both market rate and Inclusionary Units, the cost of building-wide systems and common areas), as allocated between the Privately-Owned Facilities or Components and the other improvements; and

(iii) amounts paid to the City that apply to more than one Privately-Owned Facility or Component or both Privately-Owned Facilities or Components and other improvements (e.g., inspection fees, plan review fees, etc.), as allocated between the Privately-Owned Facilities or Components and, if applicable, the other improvements.

(e) Review Process. The process for review of the Payment Requests for Privately-Owned Facilities and Components is subject to Article 6.

5.4 Payment.

(a) Processing of Payment Requests. Payment Requests for Privately-Owned Facilities or Components shall be processed pursuant to Sections 4.2 and 4.3 above.

5.5 Eligibility of Affordable Housing for Financing.

(a) Applicability. The following additional provisions shall apply to the financing of Inclusionary Units and 100% Affordable Housing Projects. In the event of any conflict between this Section and the other provisions of this Article 5, this Section shall govern.

(b) Housing Plan. The Developer shall provide affordable housing in accordance with the Housing Plan, subject to such other requirements described in this Section 5.5. In the event of any conflict between this Section and the Housing Plan, this Section shall govern solely to the minimum extent required to comply with the EIFD Law.

(c) Permitted Uses of EIFD Financing for Affordable Housing.

(i) The Developer may use proceeds of EIFD Bonds and Allocated Tax Revenue to finance the Actual Costs (including related planning and design work) of purchasing, constructing, expanding, improving, seismic retrofitting or rehabilitating affordable housing units on 100% Affordable Parcels, provided that any such financed housing units on a 100% Affordable Parcel, as memorialized by a recorded covenant or restrictions, shall remain available at affordable housing costs to, and occupied by, persons and families of very low, low, or moderate income (as defined in California Health and Safety Code Sections 50105 and 50093) for the longest feasible time (including the period of time specified in the Housing Plan), but for not less than 55 years for rental units and 45 years for owner-

occupied units. For purposes of this paragraph, “affordable housing cost” shall mean Housing Cost as defined in the Housing Plan.

(ii) The Developer may use proceeds of EIFD Bonds and Allocated Tax Revenue to finance the Actual Costs (including related planning and design work) of purchasing, constructing, expanding, improving, seismic retrofitting or rehabilitating (A) Inclusionary Units, provided that any such Inclusionary Units, as memorialized by a recorded covenant or restrictions, shall remain available at affordable housing costs to, and occupied by, persons and families of very low, low, or moderate income (as defined in California Health and Safety Code Sections 50105 and 50093) for the longest feasible time (including the period of time specified in the Housing Plan), but for not less than 55 years for rental units and 45 years for owner-occupied units and (B) facilities for child care, after school care, and social services located on the Project Site that are integrally linked to the tenants of the Inclusionary Units financed by the EIFD Bonds or Allocated Tax Revenue. For purposes of this paragraph, “affordable housing cost” shall mean Housing Cost as defined in the Housing Plan.

(iii) The Developer may use proceeds of EIFD Bonds and Allocated Tax Revenue to finance the Power Station Affordable Housing In-Lieu Fee and the Power Station Proportionality In-Lieu Fee (both as defined in the Housing Plan). The City will use the Power Station Affordable Housing In-Lieu Fee and the Power Station Proportionality In-Lieu Fee to finance affordable housing in accordance with the preceding clauses (i) and (ii). The Developer acknowledges that any EIFD Bonds issued to finance Power Station Affordable Housing In-Lieu Fee and the Power Station Proportionality In-Lieu Fee may be issued as federally taxable EIFD Bonds.

(d) The Developer agrees that, solely to the extent required by the EIFD Law and the Housing Plan, (i) all Inclusionary Units and affordable housing units on 100% Affordable Parcels financed by the EIFD will be subject to the lottery system established by MOHCD under Section 415, (ii) MOHCD will monitor and enforce the requirements applicable to Inclusionary Units and affordable housing units on 100% Affordable Parcels financed by the EIFD under this Agreement in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under the Housing Plan and (iii) to the extent there are implementation issues that have not been addressed, defined, or are otherwise regulated by this Agreement or the Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues. For avoidance of confusion, nothing in this Agreement shall permit MOHCD or the City to restrict the Housing Cost of Inclusionary Units or 100% Affordable Units to be affordable to households earning less than the maximum AMI percentage for households earning very low, low, or moderate income (as defined in California Health and Safety Code Sections 50105 and 50093) or less than the maximum AMI levels permitted in the Housing Plan, unless such restriction is required by the EIFD Law and the Developer elects at its sole discretion to use the proceeds of the EIFD Bonds and Allocated Tax Revenue to finance such Inclusionary Units or 100%

Affordable Units. Neither the City nor MOHCD shall have the right to require Developer to sell or rent the Inclusionary Units or 100% Affordable at a Housing Cost that is lower than required by the Housing Plan. The rights of the City and the EIFD set forth in this subsection shall be included in a Notice of Special Restrictions recorded in accordance with Exhibit D (Housing Plan) to the Development Agreement and, if the Notice of Special Restrictions does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law.

(e) The EIFD and the City will not finance Components of Inclusionary Units or 100% Affordable Housing Projects.

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 5.4.

(b) Each Payment Request will identify all the Identified Funding Sources that are eligible to be used to pay it.

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

(d) The City shall not deliver to the EIFD a counter-signed Payment Request while Developer is in default in the payment of any ad valorem taxes, special taxes, or property tax assessments levied on any parcel it then owns or while Developer (under and as defined in this Agreement) is in Default (under and as defined in the Development Agreement).

(e) The City, the EIFD, and Developer acknowledge that EIFD Funding Sources may be applied to the payment of a Payment Request only to the extent that the costs of the Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) 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 all or any part of a Payment Request, then the EIFD will pay the Payment Request to the extent of available Identified Funding Sources and notify Developer of the amount of the remaining portion, which may be the entirety of the Payment Request if there were no Identified Funding Sources available at the time of submission of the Payment Request (herein,

the “**Unpaid Portion**”). The right to the payment of the Unpaid 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 EIFD 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 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) 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 and the EIFD 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 and the EIFD 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.

7.3 Covenants of the City.

(a) Allocation. The City covenants to allocate the Allocated Tax Revenue and the Conditional Tax Revenue in accordance with the IFP.

(b) No IFP Amendment without Developer Approval. The City will not approve any amendments to the IFP that would alter the following prioritization of use of the Allocated Tax Revenue without the Developer's prior written approval:

(i) first, to pay EIFD administrative costs;

(ii) second, to pay debt service on EIFD Bonds and to replenish any reserve funds associated with EIFD Bonds;

(iii) third, to repay the City for any Conditional Tax Revenue actually used to pay debt service on EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds in an amount equal to the Conditional Tax Revenue actually used to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds plus interest through the date of repayment at an annual interest rate equal to the rate of interest on the United States Treasury bond with a

10-year maturity on the date of the first use of Conditional Tax Revenue plus 300 basis points, and such interest rate shall remain fixed for the remainder of the term of the IFP; and

(iv) fourth, to accumulate over time and, from time to time at the Developer's request, to pay directly or reimburse the Developer for the Qualified EIFD Improvements as set forth in this Agreement.

(c) No Bond Parameter Amendments without Developer Approval. The City will not approve any amendments of the IFP that would alter the following principles related to the issuance of EIFD Bonds: (i) the EIFD will issue EIFD Bonds in compliance with the EIFD Law and the IFP to finance the Qualified EIFD Improvements, (ii) the EIFD Bonds will not be issued except upon the written request of the Developer and with the prior approval of the Board of Supervisors, and (iii) other than paying EIFD administrative costs, and costs of issuance and funding capitalized interest and debt service reserve funds, the proceeds of the EIFD Bonds shall be used to finance Qualified EIFD Improvements in the amounts requested by the Developer and approved by the City.

7.4 Covenants of the Developer.

(a) Filing of Annual Reports. In connection with the EIFD's preparation and filing of the annual report required by California Government Code Section 53398.66(j), the Developer shall provide such information and provide such assistance on a timely basis as may be reasonably requested by the EIFD.

(b) Preparation of Audits. In connection with the EIFD's preparation and filing of the audits required by California Government Code Sections 53398.66(j) and 53398.88, the Developer shall provide such information and provide such assistance on a timely basis as may be reasonably requested by the EIFD.

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

(a) The EIFD is a duly formed enhanced infrastructure financing district formed under the EIFD Law, is in compliance with the EIFD Law, and has the power and authority to carry on its business as now being conducted.

(b) The EIFD 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 EIFD.

7.6 Covenants of the EIFD. The EIFD makes the following covenants to the City and the Developer:

(a) Commencement Date for each Project Area. With respect to each Project Area, the EIFD shall not take any action to interfere with the allocation of Allocated Tax Revenue from property in such Project Area in accordance with the IFP.

(b) Application of EIFD Funding Sources. The EIFD shall apply the EIFD Funding Sources in accordance with the IFP and this Agreement.

(c) Filing of Annual Reports. The EIFD shall timely file the annual report required by California Government Code Section 53398.66(j). The EIFD acknowledges that the failure to timely file the annual report (i) could result in the inability to spend any Allocated Tax Revenue until the report is filed and (ii) shall constitute an Event of Default under this Agreement.

(d) Preparation of Audits. The EIFD shall timely provide the audit required by California Government Code Section 53398.88. The EIFD acknowledges that the failure to timely prepare the audit shall constitute an Event of Default under this Agreement.

(e) No IFP Amendment without Developer Approval. The EIFD will not approve any amendments to the IFP that would alter the following prioritization of use of the Allocated Tax Revenue without the Developer's prior written approval:

- (i) first, to pay EIFD administrative costs;
- (ii) second, to pay debt service on EIFD Bonds and to replenish any reserve funds associated with EIFD Bonds;
- (iii) third, to repay the City for any Conditional Tax Revenue actually used to pay debt service on EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds in an amount equal to the Conditional Tax Revenue actually used to pay debt service on the EIFD Bonds or replenish debt service reserve funds for the EIFD Bonds plus interest through the date of repayment at an annual interest rate equal to the rate of interest on the United States Treasury bond with a 10-year maturity on the date of the first use of Conditional Tax Revenue plus 300 basis points, and such interest rate shall remain fixed for the remainder of the term of the IFP; and
- (iv) fourth, to accumulate over time and, from time to time at the Developer's request, to pay directly or reimburse the Developer for the Qualified EIFD Improvements as set forth in this Agreement.

7.7 Events of Defaults; Remedies. In the event that the EIFD or the City defaults under its respective obligations under this Agreement or the IFP, the Developer or the City may provide a written notice of default to the EIFD or the City, as applicable (the "**Default Notice**"). The Default Notice shall specify the nature of the default, and shall determine whether the default has to do with the processing and delivering of Payment Requests, the application of Allocated Tax Revenue, Conditional Tax Revenue, or proceeds of EIFD Bonds, or the filing of the annual reports required by the EIFD Law (herein, a "**Monetary Default**") or any other default under this Agreement or the IFP (herein, a "**Non-Monetary Default**"). The EIFD or the City, as the case may be, shall have three (3) Business Days to cure a Monetary Default and fifteen (15) Business Days to cure a Non-Monetary Default, in each case following receipt of the applicable Default Notice therefor. The failure to timely cure the default provided in the Default Notice shall be considered an "**Event of Default**." If an Event of Default occurs, the City or the Developer may exercise all legal and equitable remedies available, including but not limited to filing proceedings to compel

injunctive relief or specific performance of the IFP and this Agreement; provided, however, that the City shall not be liable for monetary damages as a result of the exercise of remedies by the Developer except for the payment of reasonable attorneys' fees and costs pursuant to Section 8.3. The EIFD and the City hereby acknowledge and agree that a failure of the EIFD or the City to timely perform any duty, obligation or covenant under the IFP or this Agreement, including the allocation and application of Allocated Tax Revenue and Conditional Tax Revenue in accordance with the IFP and this Agreement, will cause irreparable harm to the Developer that cannot be fully compensated by monetary damages, and shall entitle the Developer to seek injunctive relief or specific performance. In addition, the City shall also be entitled to all legal and equitable remedies, including, but not limited to, injunctive relief to compel the EIFD to perform its duties, obligations, or covenants under the IFP and this Agreement.

(a) Waiver of Government Claims Act Procedures. Due to the unique nature of the IFP and the Project and because time is of the essence in the performance of obligations under the IFP and this Agreement, the City and the EIFD hereby each waive the procedural protections of the Government Claims Act, Cal. Gov't Code Section 810 et seq, in connection with any dispute related to or arising out of the IFP or this Agreement, including those procedures requiring the filing of an administrative claim within the applicable statute of limitation.

(b) Rights and Remedies Cumulative. The rights and remedies of the Developer and the City regarding the enforcement of the IFP and this Agreement shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this Agreement for the same breach by the applicable party. In addition, the remedies provided in this Agreement regarding the enforcement of the IFP and this Agreement do not limit the remedies provided in other Project agreements among the City and the EIFD.

ARTICLE 8 MISCELLANEOUS

8.1 Limited Liability of the City and EIFD. Except as otherwise provided in the Development Agreement, Developer agrees that any and all obligations of the City and EIFD arising out of or related to this Agreement are special and limited obligations of the City and EIFD, and the EIFD's obligations to make any payments under this Agreement to implement the Financing Plan are restricted entirely to available EIFD Funding Sources and Conditional Tax Revenue as provided in the IFP and the Financing Plan and from no other source. No member of the Board of Supervisors, the Public Financing Authority, 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 EIFD (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 or EIFD in the event of any default or breach of this Agreement by the City or EIFD or for any

amount that may become due to Developer, the EIFD, or the City, as the case may be, under this Agreement or for any obligations of the Parties under this Agreement.

8.2 Timelines. Time is of the essence with respect to each provision of this Agreement in which time is a factor. The City will use good faith efforts to comply with all timelines applicable to City responses set forth in this Agreement, but failure by the City to comply with such timelines shall not result in deemed approval of the related request or a default by the City under this Agreement. In the event the City fails to exercise good faith in complying with the timelines or repeatedly fails to meet the timelines in this Agreement, the Developer may add such failures as an agenda item for a meeting of the Review Panel.

8.3 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 8.3 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.

(c) 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. This Agreement may not be assigned by the EIFD or the City. This Agreement may be assigned by the Developer only by a written EIFD Assignment to a Person that has also entered into a DA Assignment and Assumption Agreement. The sale of property and the entering into a DA Assignment and Assumption Agreement by a Transferee does not give the Transferee any rights under this Agreement. A Transferee will have no rights under this Agreement unless the Developer has specifically assigned this Agreement in a separate written EIFD Assignment and then only to the extent set forth in the EIFD Assignment.

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 or the IFP, the Financing Plan or IFP, as the case may be, will prevail.

8.6 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, or the failure by a Party to exercise its rights upon the default of another Party, will not constitute a waiver of such Party's right to later insist upon and demand strict compliance by another Party with the terms of this Agreement.

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, the EIFD, 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, the EIFD, or Developer will be for the sole and exclusive benefit of the City, the EIFD, and Developer, subject to Section 8.5.

8.8 Amendment. This Agreement may be amended from time to time by the written agreement of the City, the EIFD, and Developer. A Supplement may be 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.

“**100% Affordable Housing Parcel**” is defined in the Housing Plan.

“**100% Affordable Housing Projects**” is defined in the Housing Plan.

“**100% Affordable Unit**” is defined in the Housing Plan.

“**Acceptable Title**” means, with respect to Acquisition Facilities only, 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 or any Governmental Entity, is exempt from the special tax to be levied by the CFD.

“**Acquisition Facilities**” means the EIFD Improvements to be acquired by the City or other Governmental Entity.

“**Acquisition Facility Completion Confirmation**” means, as the context requires, an Acquisition Facility Determination of Completion or an Acquisition Facility Determination of Component Completion issued by the Director of Public Works, the San Francisco Department of Building Inspection, or the Port under Section 3.1(c) with respect to an Acquisition Facility or Component, respectively.

“**Acquisition Facility Determination of Completion**” means, for a completed Acquisition Facility, a written notice from the Director of Public Works that the Acquisition Facility has been approved as inspected. Pursuant to the MOU, the Department of Public Works will provide construction inspection services for all Acquisition Facilities constructed on or after the date of the MOU, with the exception of shoreline improvements, which will be inspected by the Port. For all

Acquisition Facilities inspected or to be inspected by the Department of Public Works, the San Francisco Department of Building Inspection, or the Port, the Acquisition Facility Determination of Completion shall be the form customarily provided by the Director of Public Works, the San Francisco Department of Building Inspection, or the Port to evidence the completion and approval of the inspection of a facility. An Acquisition Facility Determination Completion does not constitute a Notice of Completion under the Public Improvement Agreement.

“Acquisition Facility Determination of Component Completion” means a written notice of the Director of Public Works that a Component has been approved as inspected. For a Component being financed in progress payments, the written notice shall evidence that the work represented by the progress payment requested has been performed. The form of the written notice shall be the form (e.g., a job card) customarily provided by the Director of Public Works to evidence the approval of the inspection of work in place. An Acquisition Facility Determination of Component Completion does not constitute a Notice of Completion under the Public Improvement Agreement.

“Actual Cost” means the out-of-pocket Qualified costs actually incurred by Developer in connection with construction of an Acquisition Facility (or Component thereof) or Privately-Owned Facility (or Component thereof) (which includes any applicable Developer Allocation, or Agreed-Upon Allocation), including, without limitation or duplication:

(i) costs incurred by the Developer to acquire from unrelated Third Parties, hold through completion of the EIFD Improvements, and as relates to Acquisition Facilities, convey Acceptable Title to the Port, the City, or any other Governmental Entity, any real property, rights-of-way, or other interests in real property (including, without limitation, temporary or permanent leases, easements, rights of entry, or encroachments) required to construct the EIFD Improvements, together with any transaction costs associated with the acquisition and/or conveyance, such as transfer taxes, title insurance, and recording fees;

(ii) “hard costs,” including without limitation:

- (1) construction labor and materials;
- (2) tenant improvements and/or tenant improvement allowances provided by Developer for Privately-Owned Facilities;
- (3) preserving and modifying existing historical structures on the Project Site, including, without limitation, deconstruction, selective demolition, stabilization, seismic retrofit, and hazardous materials abatement activities;
- (4) utility relocations;
- (5) geotechnical measures to prepare the Project Site for construction of the EIFD Improvements, including, without limitation, excavation, soil harvesting for fill and surcharge, import and export of materials/soil for fill and surcharge, clearing and grubbing, slope stabilization, deep soil mixing and other ground improvement methods, installation of geogrid, surcharging, wick drains, rock fragmentation, placement of fill, compaction, mass and finish grading, and post-construction stabilization such as hydroseeding;
- (6) site preparation and management costs including, without limitation, contractor mobilization; potholing; construction staking; demolition; dewatering; erosion, dust, vibration, stormwater, groundwater, archaeological, paleontological, biological,

traffic and air quality monitoring and control measures as required during construction of the EIFD Improvements pursuant to the Approvals and Non-City Regulatory Approvals; temporary improvements, equipment, fencing, job site trailers, parking, signage, labor, lighting, utilities; and

(7) temporary or permanent improvements on private properties adjacent to the Project Site as required to construct the EIFD Improvements, including without limitation, relocating and/or replacing service laterals, boxes, vaults and fire department connections, conforming driveways to new grades, and installing shoring;

(iii) “soft costs” such as architectural, engineering, consultant, accountant, attorney, reprographics, and other professional fees, including, without limitation:

- (1) architects and landscape architects;
- (2) environmental scientists, consultants, and engineers;
- (3) civil, geotechnical, and structural engineering;
- (4) surveying;
- (5) cost estimating and other preconstruction services;
- (6) traffic studies, street geometric and signal design, and transportation demand management;
- (7) mechanical, electrical, and plumbing design;
- (8) acoustical design and engineering;
- (9) lighting design;
- (10) signage and interpretive design;
- (11) waterproofing consultants;
- (12) vertical transportation design;
- (13) fire & life safety systems design;
- (14) joint trench design and utility consultants;
- (15) code consultants;
- (16) sustainability consultants;
- (17) interior design;
- (18) testing and special inspection;
- (19) peer review of any of the foregoing; and
- (20) permit expediting.

(iv) property insurance (including any comprehensive owner-controlled insurance program, general liability, automobile liability, worker’s compensation, personal property, flood, pollution legal liability, comprehensive personal liability, builder’s risk, and professional services insurance);

(v) construction management fees, project management costs, and asset management costs paid to or by Developer (which may include the costs of Developer’s employees), a Transferee, or their respective Affiliates, limited in the aggregate to 15% of Actual Costs that are hard costs;

(vi) Impact Fees and Exactions that will be used to finance EIFD Improvements, Power Station Affordable Housing In-Lieu Fees that will be used to finance affordable housing as

described in Section 5.5, utility connection fees and capacity charges incurred in connection with the construction of EIFD Improvements, plan check and inspection fees, and other fees paid by Developer to the City, Port and any other Governmental Entity for obtaining permits, licenses, certificates of occupancy, Completion Confirmation, and all other Approvals and Non-City Regulatory Approvals needed to develop or construct the EIFD Improvements;

(vii) Compliance with the Approvals, the Non-City Regulatory Approvals, and CEQA, including without limitation the MMRP;

(viii) City Costs;

(ix) real property and possessory interest taxes;

(x) costs to use financing sources other than the EIFD Funding Sources that are provided by entities that are not affiliates of the Developer pursuant to an arm's length transaction, such as interest expense, points, lender fees, mortgage recording fees, and loan closing costs;

(xi) security required under the Development Agreement, Port Lease, Approvals, Non-City Regulatory Approvals or otherwise related to the construction, acceptance and/or conveyance of the EIFD Improvements, such as guarantees, letters of credit, and payment, performance and/or maintenance bonds;

(xii) Project Site safety and security measures;

(xiii) capitalized maintenance of the EIFD Improvements (i.e., maintenance that extends the useful life of such EIFD Improvements, not routine maintenance);

(xiv) Third Party costs to prepare and store audits and reports consistent with the EIFD Law and this Agreement;

(xv) any other cost specifically identified in this Agreement, the Development Agreement or IFP as a Qualified cost.

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

“Agreement” is defined in the introductory paragraph.

“Allocated Tax Revenue” is defined in the IFP.

“Applicable Standards” is defined in the Development Agreement.

“Approvals” is defined in the Development Agreement.

“Base Year” is defined in the IFP.

“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 Acquisition and Reimbursement Agreement**” means an Acquisition and Reimbursement Agreement (Power Station), dated for reference purposes as _____, by and between the City and the Developer.

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

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

“**CFD Remainder Taxes**” is defined in the CFD Acquisition and Reimbursement Agreement.

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

“**City Share of Increment**” is defined in the IFP.

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

“**Component**” means a component or phase or progress payment of an EIFD Improvement shown in Exhibit B, as amended from time to time by an approved Supplement.

“**Conditional Tax Revenue**” is defined in the IFP.

“**DA Assignment and Assumption Agreement**” means an Assignment and Assumption Agreement, as defined in the Development Agreement.

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

“**Developer**” means the California Barrel Company LLC, a Delaware limited liability company, and its successors and assigns.

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

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

“**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.

“**Effective Date**” is defined in Section 1.1.

“**EIFD**” is defined in the IFP.

“EIFD Assignment” means a written assignment of all or part of this Agreement by the Developer to Person, who may be a Transferee. An EIFD Assignment must be separate and apart from any DA Assignment and Assumption Agreement.

“EIFD Bonds” means one or more series of bonds issued by the EIFD and secured by the Allocated Tax Revenue and Conditional Tax Revenue.

“EIFD Funding Sources” is defined in Recital C(1).

“EIFD Improvements” means the Acquisition Facilities and Privately-Owned Facilities described in Exhibit A (as such exhibit may be amended or supplemented from time to time in accordance with this Agreement) and other facilities and improvements eligible to be financed by the EIFD Law and the IFP (whether or not required by the Development Agreement) that are constructed in connection with the Project.

“EIFD Law” is defined in the IFP.

“Event of Default” is defined in Section 7.4(f).

“Financing Plan” means the Amended and Restated Financing Plan attached as Exhibit C to the Development Agreement.

“Fiscal Year” means the period commencing on July 1 of any year and ending on the following June 30.

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

“Governmental Entity” is defined in the Financing Plan.

“Gross Tax Increment” is defined in the IFP.

“Housing Plan” is the Housing Plan attached as Exhibit D to the Development Agreement.

“Identified Funding Sources” means, as applicable (i) EIFD Funding Sources, (ii) CFD Funding Sources, and (iii) both of the foregoing, if the EIFD Improvement is eligible to be financed by both EIFD Funding Sources and CFD Funding Sources.

“IFP” means the Infrastructure Financing Plan for the EIFD required to be prepared and approved under the EIFD Law.

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

“Inclusionary Units” is defined in the Housing Plan.

“Incremental Assessed Property Value” is defined in the IFP.

“Indenture” is defined in the Financing Plan.

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

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

“**MOU**” means the Memorandum of Understanding Regarding Review, Permitting, and Inspection of Public and Private Open Space, and Port and Private Streets at Potrero Power Station, entered into by the Department of Public Works, the San Francisco Department of Building Inspection, and the Port as of June 16, 2023.

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

“**Notice of Special Restrictions**” is defined in the Housing Plan.

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

“**Party**” or “**Parties**” means, individually or collectively as the context requires, Developer, the EIFD, and/or 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 Facility or Component, substantially in the form of Exhibit D.

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

“**Plans**” means the construction drawings and specifications that together form the basis of construction for an Acquisition Facility or Component, or a Privately-Owned Facility or Component.

“**Port**” means the San Francisco Port Commission.

“**Power Station Affordable Housing In-Lieu Fees**” is defined in the Housing Plan attached as Exhibit D to the Development Agreement.

“**Private Completion Confirmation**” means, as the context requires, a Private Determination of Completion or a Private Determination of Component Completion issued by the Director of Public Works, the San Francisco Department of Building Inspection, or the Port, as applicable, under Section 5.1 with respect to Privately-Owned Facility or Component, respectively.

“**Private Determination of Completion**” means, for a completed Privately-Owned Facility, a written notice from the Director of Public Works, the San Francisco Department of Building Inspection, or the Port, as applicable, that the Privately-Owned Facility has been approved as inspected. Pursuant to the MOU, the Department of Public Works will provide construction inspection services for most Privately-Owned Facilities commenced on or after the date of the MOU, with the exception of shoreline improvements, which will be inspected by the Port. Inclusionary Units and 100% Affordable Housing Projects will be inspected by the San Francisco Department of Building Inspection. For all Privately-Owned Facilities inspected or to

be inspected by the Department of Public Works or the Port, the Private Determination of Completion shall be in a form similar to the forms customarily provided by the Director of Public Works or the Port, as applicable, to evidence the completion and approval of the inspection of a facility. For Inclusionary Units and 100% Affordable Housing Projects, the Private Determination of Completion shall be a temporary certificate of occupancy.

“Private Determination of Component Completion” means a written notice of the Director of Public Works, the San Francisco Department of Building Inspection, or the Port, as applicable, that a Component of a Privately-Owned Facility has been approved as inspected. For a Component of a Privately-Owned Facility being financed in progress payments, the written notice shall evidence that the work represented by the progress payment requested has been performed. The form of the written notice shall be the form (e.g., a job card) customarily provided by the Director of Public Works, the San Francisco Department of Building Inspection, or the Port, as applicable, to evidence the approval of the inspection of work in place.

“Privately-Owned Facilities” means EIFD Improvements that are not Acquisition Facilities.

“Project” is defined in the Development Agreement.

“Project Area” means one or more project areas of the EIFD.

“Project Site” is defined in the Development Agreement.

“Proof of Payment” means a cancelled check, a wire or ACH 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 Financing Authority” is defined in the IFP.

“Public Improvement Agreement” means (1) the Potrero Power Station Mixed-Use Development Project Development Phase 1 Public Improvement Agreement dated for reference as of August 4, 2022, by and between the City and the Developer, recorded in the Official Records of the City and County of San Francisco on September 21, 2022 as Instrument Number 2022088015, as it may be amended from time to time and (2) similar agreements for future phases of the Project.

“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 thereof) or Privately-Owned Facility (or Component thereof) is ready for its intended use and is completed in substantial conformity with the Development Agreement, Plans and Applicable Standards and procedures, irrespective of the functionality of the larger system of which it is a part. A Ready for Payment determination does not constitute the issuance of a Notice of Completion under the Public Improvement Agreement.

“**Section 415**” means the City’s Inclusionary Affordable Housing Program as of the Effective Date (Planning Code sections 415 and 415.1 through 415.11).

“**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 or an Affiliate.

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

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

“**Transportation Plan**” means the Transportation Plan attached as Exhibit I to the Development Agreement.

“**Vested Payment Request**” is defined in Section 6.2.

“**Workforce Agreement**” means the Workforce Agreement attached as Exhibit F to the Development Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City, the EIFD, 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:

DAVID CHIU,
City Attorney

By:

Name:

Deputy City Attorney

SAN FRANCISCO ENHANCED
INFRASTRUCTURE FINANCING DISTRICT
No. 1 (POWER STATION)

By:_____

Authorized Representative

DEVELOPER:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

Description of EIFD Improvements to be Financed for the Project

The EIFD shall be authorized to finance all or a portion of the costs of the purchase, construction, expansion, improvement, seismic retrofit, rehabilitation, repair, replacement or maintenance of the public capital facilities or other projects (whether publicly- or privately-owned) of communitywide significance that are (i) authorized by the EIFD Law and (ii) required or permitted by the Development Agreement, the Plan Documents or the Approvals for the development of the project known as the Potrero Power Station Project, including, but not limited to, the actual costs of those facilities and projects of communitywide significance described below (the "**Facilities**") and those costs described below.

The Facilities may be owned by a public agency (including, but not limited to, the City and County of San Francisco (including through its Port Commission or other City agencies, collectively, "**City**")) or privately-owned as permitted by the EIFD law.

Facilities may be physically located within or outside the boundaries of the EIFD; any Facilities that are located outside the boundaries of the EIFD must have a tangible connection to the work of the EIFD.

Unless otherwise indicated, capitalized terms used herein but not defined herein have the meanings given them in the Development Agreement.

The Facilities include, but are not limited to, the following:

1. Infrastructure, as defined in the Development Agreement, constructed or caused to be constructed by Developer.
2. Parks and Open Space, as defined in the Development Agreement, including any Interim Uses, as defined in Planning Code section 249.87.
3. Public Improvements, as defined in the Development Agreement.
4. Privately-Owned Community Improvements, as defined in the Development Agreement, constructed or caused to be constructed by Developer and located within the EIFD or offsite on City- or privately-owned land.
5. Affordable Housing. The acquisition, construction, or rehabilitation of housing for persons of very low, low, and moderate income, as defined in Sections 50105 and 50093 of the California Health and Safety Code, for rent or purchase.
6. TDM Measures, as defined in the Transportation Plan attached to the Development Agreement.

7. Improvements, Waterfront Park, and Recreational Dock, all as defined in the Ground Lease (No. L-16662) between the City, operating by and through the San Francisco Port Commission and California Barrel Company LLC dated as of March 15, 2021, as it may be amended from time to time (the "Port Lease").
8. Port Approval Items, as described on Exhibit G to the Port Lease.
9. Craig Lane, as defined in the Reciprocal Easement Agreement by and among California Barrel Company LLC, FC PIER 70, LLC, and the City, operating by and through the San Francisco Port Commission, dated as of March 15, 2021, as it may be amended from time to time.
10. The partial demolition, abatement, stabilization and/or rehabilitation of existing structures for incorporation into the Potrero Power Station Project, including "Station A", "Unit 3" and "The Stack."
11. Developer's contribution to the costs of developing an (i) Enlarged Pump Station on the Pier 70 site (which eliminates the need to build the pump station included in the Power Station Infrastructure Plan (see section 14.4.1.1, Northern Connection Alternative)) and (ii) the SFPUC Sewer Connection in connection therewith.
12. Developer's contribution for tenant improvements in YMCA or other community facilities located at Power Station and/or the surrounding area (such as Building 49 at Crane Cove Park).

EXHIBIT B

Description of EIFD Improvements, with Cost Estimates

[To be completed from time to time]

Form of Exhibit B Checklist to be included with all Exhibit B Supplements:

City and County of San Francisco – Potrero Power Station Reimbursement Request

Supplemental Exhibit B Checklist

Supplemental No.

Proposed Facilit(ies)/Component(s):

Submittal Date:

Supporting Documentation:

- Reasonably detailed descriptions of each Acquisition Facility, Privately-Owned Facility and Component included in the proposed Exhibit B Supplement
- Estimates of the Actual Costs of each Acquisition Facility, Privately-Owned Facility and Component included in the proposed Exhibit B Supplement
- Proposed Developer Allocation, if applicable
- Executed contracts and related change orders, along with written summary of solicitation/award process
- Acknowledged PCOW(s), if applicable

For Inclusionary Units and 100% Affordable Housing Projects:

- Estimate of proposed sources and uses
- Copies of any applications submitted for local, State or Federal grant or loan financing
- Copy of (A) the Notice of Special Restrictions and (B) if the Notice of Special Restrictions does not evidence compliance with the EIFD Law, a covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law
- Plans

For 100% Affordable Housing Projects:

- Copy of the Affordable Housing Conveyance Agreement
- Estimate of projected operating cash flow at stabilization

EXHIBIT C

Form of Payment Request – Acquisition Facilities and Components

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

California Barrel Company LLC (the “Developer”) hereby requests payment in the total amount of \$_____ for the Acquisition Facilities or Components as described in Exhibit B to that certain EIFD Acquisition and Financing Agreement (the “Acquisition Agreement”) among the City and County of San Francisco, the San Francisco Enhanced Infrastructure Financing District No. 1 (Power Station), and the Developer dated for reference purposes only as of _____, all as more fully described in Exhibit C-1. In connection with this Payment Request, the Developer hereby represents and warrants to the Director of Public Works and the City to the actual knowledge of the undersigned, as follows:

1. The undersigned is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer.
2. The Acquisition Facilities or Components for which payment is requested were constructed in accordance with the Development Agreement (including, but not limited to, compliance with the Workforce Agreement and payment of prevailing wage), 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 costs 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 actual 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 then-owned by Developer in the Project Site.

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

Identified Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
EIFD Funding Sources	Proceeds of EIFD Bonds
	Allocated Tax Revenue
CFD Funding Sources	Proceeds of CFD Bonds for Improvement Area No. ____
	Remainder Special Taxes for Improvement Area No. ____
Total Actual Cost	

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

9. Payments under this Payment Request, when 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: _____

The Developer hereby declares that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the actual knowledge of the undersigned.

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 Acquisition Facility Determination of Completion
- For Completed Acquisition Facility:** Original assignment of warranties and guaranties
- For Completed Acquisition Facility:** Original assignment of Plans
- For Completed Acquisition Facility:** As-built drawings of the Acquisition Facility
- Exhibit C-1
- Exhibit C-2

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: _____

1. The Acquisition Facilities and Components for which payment of Actual Costs 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)

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: _____

1. Description (by reference to Exhibit B to the EIFD Acquisition and Financing 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(b) of the EIFD Acquisition and Financings Agreement): (\$ _____)
 - B. Retention (see Section 4.4(d) of the EIFD Acquisition and Financing 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 Facilities and Components

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____ (“Developer”)

California Barrel Company LLC (the “Developer”) hereby requests payment in the total amount of \$_____ for the Privately-Owned Facilities as described in Exhibit B to that certain EIFD Acquisition and Financing Agreement among the City and County of San Francisco, San Francisco Enhanced Infrastructure Financing District No. 1 (Power Station), and the Developer, 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 Developer hereby represents and warrants to the Director of Public Works and the City to the actual knowledge of the undersigned as follows:

1. The undersigned is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer.
2. The Privately-Owned Facilities or Components for which payment is requested were constructed in accordance with the Development Agreement (including, but not limited to, compliance with the Workforce Agreement and payment of prevailing wage) and inspected pursuant to Section 5.1 of the Acquisition Agreement.
3. All costs of the Privately-Owned 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 costs 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 Facility or Component (a detailed calculation of which is shown in Exhibit D-2 for each such Privately-Owned Facility or Component), has been calculated in conformance with the terms of the Acquisition Agreement.
7. To the actual 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 then-owned by Developer in the Project Site.

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

Identified Funding Sources from which Actual Costs may be Paid (check one or more boxes)	Identified Funding Sources
EIFD Funding Sources	Proceeds of EIFD Bonds
	Allocated Tax Revenue
CFD Funding Sources	Proceeds of CFD Bonds for Improvement
	Area No. ____
	Remainder Special Taxes for Improvement
	Area No. ____
Total Actual Cost	

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

9. Payments under this Payment Request, when 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: _____

The Developer hereby declares that the above representations and warranties and all information provided in this Payment Request, including attachments and exhibits, are true and correct to the actual knowledge of the undersigned.

DEVELOPER:

[insert name of Developer]

By: _____
Authorized Representative
of Developer

Date: _____

Attachments:

- Notice of approval following inspection
- Unconditional lien releases from the following: _____

 Conditional lien releases from the following: _____

 For Completed Privately-Owned Facility: Temporary certificate of occupancy (where applicable)

For Completed Privately-Owned Public Open Spaces: Declaration of Public Open Space Covenants and Restrictions

For Completed Inclusionary Units and 100% Affordable Housing Projects: Notice of Special Restrictions and covenant or restriction recorded in the real property records evidencing compliance with the EIFD Law

Exhibit D-1

Exhibit D-2

Payment Request Approved on _____.

By: _____
Director of Public Works

EXHIBIT D-1

Privately-Owned Facilities and Components to Which Payment Request Applies

PAYMENT REQUEST NO. _____

MADE ON BEHALF OF: _____

1. The Privately-Owned Facilities and Components for which payment of Actual Costs is requested under this Payment Request are: _____

* Components of Inclusionary Units and 100% Affordable Housing Projects cannot be financed.

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)

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: _____

1. Description (by reference to Exhibit B to the EIFD Acquisition and Financing Agreement) of the Privately-Owned Facilities 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. Third Party Reimbursements: (\$ _____)
4. Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3): \$ _____

* Components of Inclusionary Units and 100% Affordable Housing Projects cannot be financed.

[] **For Completed Inclusionary Units and 100% Affordable Housing Projects:** Final Internal Revenue Service Form 8609 (if applicable), and project completion audit or cost certification

EXHIBIT E

Contracting Provisions in the Development Agreement

Section 3.7 Contracting for Public Improvements. In connection with construction of the Public Improvements, Developer shall engage a contractor that is duly licensed in the State and qualified to complete the work (the “**Contractor**”). The Contractor shall contract directly with Developer pursuant to an agreement to be entered into by Developer and the Contractor, which shall: (i) be a guaranteed maximum price contract; (ii) require contractor to maintain bonds and insurance for the benefit of Developer and the City in accordance with the Subdivision Code; (iii) require the Contractor to obtain and maintain customary insurance, including workers compensation in statutory amounts, employer’s liability, general liability, and builders all-risk; (iv) release the City from any and all claims relating to the construction, including to mechanics liens and stop notices; (v) subject to the rights of any Mortgagee that forecloses on the property, include the City as a third party beneficiary with all rights to rely on the work, receive the benefit of all warranties, and prospectively assume Developer’s obligations and enforce the terms and conditions of the contract as if the City were an original party thereto; and (vi) require that the City be included as a third party beneficiary with all rights to rely on the work product, receive the benefit of all warranties and covenants, and prospectively assume Contractor’s rights in the event of any termination of the contract, relative to all work performed by the Project’s architect and engineer.

Section 3.14 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors, and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement, all to the extent required thereunder.

Section 4.9 Prevailing Wages and Working Conditions. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms “public work” and “paid for in whole or part out of public funds” are defined in and subject to exclusions and further conditions under California Labor Code sections 1720–1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State Law. In addition, Developer agrees that all workers performing labor in the construction of public works (including the Public Improvements) under this Agreement will be (i) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), (ii) provided the same hours, working conditions, and benefits as in each case are provided for similar work performed in the City in Administrative Code section 6.22(f) and (iii) employ apprentices in accordance with Administrative Code Section 23.61. Any contractor or subcontractor constructing Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. The City’s Office of Labor Standards Enforcement (“**OLSE**”) enforces applicable labor Laws on behalf of the City, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, all to the extent required hereunder and as more particularly described in the Workforce Agreement. The Parties acknowledge that the Project has been certified as an Environmental Leadership Development Project pursuant to AB 900 and

accordingly as of the Reference Date is required to pay prevailing wages to the extent required under section 21183(b) of the Public Resources Code. OLSE may enforce the prevailing wage requirements of section 21183(b) of the Public Resources Code to the extent required by State Law or pursuant to an agreement approved by the California Labor Commission in a form that is generally applicable to Environmental Leadership Development Projects located in the City.

EXHIBIT F

Potential Change of Work Form

Potential Change of Work ("PCOW")

The purpose of this form is to acknowledge a change in work for the intent of reimbursement of CFD costs.

Date: _____

PCOW No. _____

Description of Contract: _____

Vendor Name: _____

**Contract Number/Change
Order Number:** _____

Potential Change of Work description:

Total Estimated Amount of PCOW: _____**

Developer Review: _____
Developer Representative Date

City Acknowledgment:

	Acknowledged and is EIFD eligible
--	--------------------------------------

City comments:

Reviewed by: _____
City Representative Date

** Estimates only. The Actual Costs of the work is eligible for financing.