

**AMENDED AND RESTATED
DEPOSIT AND REIMBURSEMENT AGREEMENT**

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

**San Francisco Enhanced Infrastructure
Financing District No. 1
(Power Station)**

THIS AMENDED AND RESTATED DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement"), dated for convenience as of ____ 2023, is by and between the City and County of San Francisco (the "City"), a charter city and municipal corporation, and California Barrel Company LLC, a Delaware limited liability company (the "Landowner"), and amends and restates that certain Deposit and Reimbursement Agreement, dated for convenience as of January 1, 2022 (the "Original Agreement"), by and between the City and the Landowner.

RECITALS:

WHEREAS, the City previously established City and County of San Francisco Special Tax District No. 2022-1 (Power Station) (the "Special Tax District") under Chapter 43, Article X of the San Francisco Administrative Code (as it may be amended from time to time, "Code"), which Code incorporates by reference the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the California Government Code (the "Act");

WHEREAS, the Landowner would like the City to establish an enhanced infrastructure financing district (the "EIFD") and its governing body (the "PFA") under Chapter 2.99 of Part 1 of Division 2 of Title 5 of the California Government Code (as it may be amended from time to time, the "EIFD Law");

WHEREAS, pursuant to the Original Agreement, the Landowner advanced funds to the City or to its agents and consultants as necessary to ensure payment of any and all costs of the City in forming the Special Tax District, provided that any advances would be reimbursed to the Landowner from the proceeds of any bonds issued by the City for the Special Tax District to the extent legally permissible;

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

electors of the district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election; and

WHEREAS, the Landowner is willing to advance funds to the City, the EIFD or their agents and consultants as necessary to ensure payment of any and all costs of the City or the EIFD in forming the EIFD and the PFA or administering the PFA, provided that the City uses good faith efforts to include any such advances in the infrastructure financing plan for the EIFD (the "IFP") as eligible costs of the EIFD, to the extent permitted by law;

WHEREAS, the City and the Landowner now desire to amend and restate the Original Agreement to specify the terms of the advances of funds and reimbursement with respect to the Special Tax District, the EIFD and the PFA.

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

AGREEMENT:

Section 1. The Advances. In connection with the formation of the Special Tax District, the Landowner previously provided \$100,000 to the City (the "Initial Advance"), to be used by the City to pay the "Initial Costs" (as defined below).

The Landowner hereby agrees to provide \$_____, in the form of cash, electronic transfer or a check payable to the City (the "Second Advance"); the Second Advance shall be delivered to the Director of the Office of Public Finance of the City prior to the execution of this Agreement by the City. The City, by its execution hereof, acknowledges receipt of the Second Advance. The Second Advance represents costs that the City and the Landowner have concluded are not being funded with other moneys provided by the Landowner.

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

The Initial Costs include, but are not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the Special Tax District, the EIFD or the PFA (such as engineering, legal counsel, including special counsel to the City, financial advisory, special tax consultant and fiscal consultant); (ii) the costs of appraisals, absorption studies and

other reports necessary or deemed advisable by City staff in forming the Special Tax District or the EIFD and issuing bonds for the Special Tax District or the EIFD; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election or hearing with respect to the Special Tax District, the EIFD or the PFA, any special tax to be levied on the taxable property in the Special Tax District, the allocation of property tax revenue by the City to the EIFD, or any bonded indebtedness of the Special Tax District or the EIFD; (iv) the costs (including attorneys fees) of any action prosecuted in the superior court to validate (A) the formation of the Special Tax District, said special tax and/or any bonded indebtedness or (B) the formation of the EIFD or the PFA, the allocation of property tax revenues by the City to the EIFD and/or any bonded indebtedness; (v) the costs of any actions (including attorneys fees) challenging the formation of the Special Tax District, the EIFD or the PFA; (vi) a reasonable charge, as determined by the Director of the Office of Public Finance, in her sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the Special Tax District formation, special tax formulation, EIFD formation, allocation of property tax revenues by the City to the EIFD, administration of the PFA, facilities acquisition and bond issuance proceedings; and (vii) any and all other actual costs and expenses incurred by the City with respect to the creation of the Special Tax District, the creation of the EIFD or the PFA or the administration of the PFA.

Section 2. Use of Funds.

(a) Pursuant to Section 53314.9 of the Act, the Advances are subject to reimbursement only as follows:

(i) If bonds are issued under the Code by the City secured by special taxes levied upon the land within the Special Tax District, the City shall provide for reimbursement to the Landowner, without interest, of all Advances spent on Initial Costs related to the Special Tax District, said reimbursement to be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Code. On or within thirty (30) days after the date of issuance and delivery of the bonds, the Director of the Office of Public Finance shall pay to the Landowner an amount equal to the Advances theretofore expended on Initial Costs related to the Special Tax District, without interest, to the extent such amount is funded with proceeds of the bonds and said reimbursement is otherwise permitted under the Code.

(ii) If bonds are never issued for the Special Tax District, the Director of the Office of Public Finance shall, within thirty (30) days after adoption of the resolution stating the intent of the City to terminate proceedings under the Code with respect to the issuance of bonds for the Special Tax District, return any then unexpended Advances to the Landowner, without interest, less (A) an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 above but have not yet been paid by the City and (B) the amount of any such Advances that the City or the Director of the Office of Public Finance concludes will be necessary to pay Initial Costs related to the EIFD or the PFA.

(b) Advances related to the EIFD or the PFA are subject to reimbursement only as follows:

(i) If the EIFD is formed, the IFP provides for the reimbursement of the Advances related to the EIFD and the PFA and bonds are issued by the EIFD under the EIFD Law, the City shall use good faith efforts to cause the EIFD to pay to the Landowner, without interest, an amount equal to all Advances spent on Initial Costs related to the EIFD and the PFA, said reimbursement to be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the EIFD Law.

(ii) If the EIFD is not formed, the Director of the Office of Public Finance shall return any then unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs which have been incurred or committed, but not yet paid by the City from the Advances.

(iii) If the EIFD is formed, but the IFP does not provide for the reimbursement of Advances, bonds are not issued by the EIFD or the EIFD does not agree to reimburse the Advances, the Director of the Office of Public Finance shall, within thirty (30) days of such determination, return any then unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs incurred by the City or that the City or is otherwise committed to pay, which costs would be subject to payment under Section 1 above but have not yet been paid by the City.

Section 3. Reimbursement of Other Landowner Costs.

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

(b) EIFD. Nothing contained herein shall prohibit reimbursement of other costs and expenses of the Landowner incurred in connection with the EIFD or the PFA from the proceeds of such bonds. Any such reimbursement shall be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the EIFD Law and the IFP and otherwise provided for in the proceedings for the formation of the EIFD and the issuance of such bonds.

Section 4. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City, which is consistent with Section 53314.9(b) of the Act with respect to the Special Tax District. The City shall in no event be liable hereunder other than to return any unexpended and uncommitted portions of any Advances as provided in Section 2 above and provide an accounting under Section 7 below. The City shall not be obligated to advance any of its own funds with respect to the establishment of the Special Tax

District, the EIFD or the PFA or for any of the other purposes listed in Section 1 hereof. No member of the City Council of the City or member, associate member, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

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

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

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

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

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

The Landowner hereby agrees to assume the defense of, indemnify and hold harmless the City, the EIFD, the PFA, and each of their respective members, officers, employees and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the Landowner or any of its members, officers, employees, contractors or agents in connection with the establishment of the EIFD or the PFA, the approval of the IFP, the allocation of property tax revenue by the City to the EIFD, and the issuance of any bonds by the EIFD. The City shall promptly

notify the Landowner of any such claim, action or proceeding, and the City shall cooperate in the defense of any action against the City or its agents. The obligations of the Landowner under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, the EIFD or the PFA, or their respective members, officers, employees or agents.

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

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

Section 11. Effect of this Agreement. This Agreement supersedes the Original Agreement in its entirety, and the Original Agreement shall be of no further force or effect.

Section 12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 13. Electronic Signatures.

(a) The parties hereto acknowledge and agree that this Agreement may be executed by one or more electronic means (hereinafter referred to as "Electronic Signatures"). Each party hereto agrees that Electronic Signatures provided by such party shall constitute effective execution and delivery of this Agreement by such party to all other parties to or relying on this Agreement. Each party hereto agrees that Electronic Signatures shall constitute complete and satisfactory evidence of the intent of such party to be bound by those signatures and by the terms and conditions of this Agreement as signed. Each party agrees that Electronic Signatures shall be deemed to be original signatures for all purposes.

(b) Each party hereto agrees to accept Electronic Signatures provided by any and all other parties to this Agreement as (i) full and sufficient intent by such parties to be bound hereunder, (ii) effective execution and delivery of this Agreement and (iii) constituting this Agreement an original for all purposes, without the necessity for any manually signed copies to be provided, maintained or to exist for back up or for any other purpose.

(c) If Electronic Signatures are used to execute this Agreement, each party hereto hereby accepts the terms of, and intends and does sign, this Agreement by its Electronic Signature hereto.

* * * * *

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

LANDOWNER:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO with
respect to the City and County of San Francisco
Special Tax District 2022-1 (Power Station) and
with respect to the proposed San Francisco
Enhanced Infrastructure Financing District No. 1
(Power Station)

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

Clerk of the Board of Supervisors