

**REIMBURSEMENT AGREEMENT
FOR PUBLIC IMPROVEMENTS**

Between

**CITY OF COACHELLA,
a California municipal corporation**

and

TOWER ENERGY GROUP

This Reimbursement Agreement for Public Improvements (the “Agreement”) is made this day of , 2020 by and between the City of Coachella, a California municipal corporation (“City”), and Tower Energy Group (“Developer”).

RECITALS

A. Developer is the owner and developer of certain real property in the County of Riverside (the “Developer Property”). A legal description of the Developer Property is attached hereto as Exhibit “A” and incorporated herein by reference.

B. As a condition of regulatory approval by the City, the Developer is required to design, construct and install, among other things, a 12” water line from the eastern boundary of the Developer Property heading west on Airport Blvd. to the intersection of Airport Blvd. and Harrison St. and then heading north on Harrison St. connecting to Avenue 54 – approximately 6,285 LF (the “Public Improvements”). The Public Improvements are more specifically described in Exhibit “B” attached hereto and incorporated herein by reference.

C. The City requires the installation of 8” waterlines as a minimum design standard, but major streets like Airport Blvd. and Harrison St typically require larger size lines., the City desires pursuant to its Water Master Plan for the entire Public Improvements to be upsized to a 12” water line to supply future growth.

D. For the Public Improvements along the boundary of the Developer Property, the Developer will be responsible for the costs of design, construction and installing the 8” water line – approximately 1,485 LF (the “Developer Improvements”). This is depicted in Exhibit “B”.

E. For the Public Improvements along Harrison St., from the northern boundary of the Developer Property to Avenue 54, the City will reimburse the Developer for design, construction, and installing the 8” water line – approximately 4,800 LF (the “Offsite Improvements”). This is depicted in Exhibit “B”.

F. For the entire Public Improvements, the City will reimburse the Developer for upsizing the Public Improvements from 8” to 12” water line – approximately 6,285 LF (the “Upsize Improvements”). This is depicted in Exhibit “B”.

G. The Developer is in the process of developing a property located at the northwest corner of Calhoun St and Avenue 50 in the City (the “Calhoun Property”) and the reimbursement amount for the Offsite Improvements will be used to offset water impact fees associated with the Calhoun Property. A legal description of the Calhoun Property is attached hereto as Exhibit “A-1” and incorporated herein by reference.

H. The parties recognize that it is in their best interests to coordinate the design, construction and installation of the Public Improvements so as to efficiently implement City’s overall capital improvement master plan and to avoid duplication of work. The provisions of this Agreement shall be in addition to all other requirements, fees and charges that Developer is required to fulfill in order to initiate the provision of public services to the Developer Property.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by City and Developer as follows:

TERMS

1. **Incorporation of Recitals.** The parties hereby agree that the above recitals are true and correct and are therefore incorporated herein by reference.

2. **Design of Public Improvements.** Subject to reimbursement as set forth herein, Developer shall be solely responsible for the design of the Public Improvements plans in accordance with all local, state, and federal laws and regulations, including all costs and expenses therefor. Prior to initiation of construction and installation, Developer shall submit the plans and specifications for approval by the City for the review and ultimate acceptance of legal title to the Public Improvements. Developer shall be solely responsible for obtaining all required federal, state and local permits and approvals. The plans and specifications for the Public Improvements shall be approved by the Engineer of the City, subject to his/her sole and absolute discretion.

3. **Construction and Installation of the Public Improvements.** Subject to reimbursement as set forth herein, Developer shall be solely responsible for construction and installation of the Public Improvements in accordance with all local, state, and federal laws and regulations, as well as coordinating with the staff of the City to arrange the required inspection of the Public Improvements including all costs and expenses therefor. The City may, but shall not be legally obligated to, monitor the contracting process, and may, but shall not be obligated to, assist Developer where appropriate.

4. **Award of Contracts.** Developer shall exercise due diligence in contracting for construction and installation of the Public Improvements within a reasonable period of time following execution of this Agreement. Developer shall be solely responsible for securing appropriate bids and awarding contracts for construction and installation of the Public Improvements in compliance with applicable federal, state, and local laws, rules and regulations. Developer shall obtain a minimum of three (3) bids from qualified and properly licensed, insured, and bonded contractors reasonably approved by the City for construction of the Public Improvements. To help determine the reimbursement amounts, the Developer shall require each bidder to provide two (2) bids, one (1) to complete the entire Public Improvements with 8" water line and one (1) to complete the entire Public Improvements with 12" water line.

5. **Bonds.** Prior to the commencement of construction of the Public Improvements, Developer shall cause the contractor to provide the Developer with a faithful performance bond and a payment bond (and accompanying multiple obligee rider) substantially in the form set forth in Exhibit "C", in an amount equal to no less than 100% of the total cost of the Public Improvements. The bonds must be provided by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business in the State of California and reasonably satisfactory to the City. The faithful performance and payment bonds must also expressly list the Developer and City as dual-obligees thereunder.

6. **Billings; Records.** Developer shall be responsible for paying all charges within the time required by state law. Developer shall maintain complete and accurate records with respect to

all costs and expenses pursuant to this Agreement. All such records shall be clearly identifiable. Developer shall allow a representative of the City, during normal business hours to examine, to audit and make transcripts or copies of such records and any other documents, proceedings, and activities related to the Agreement for a period of three (3) years from the termination of this Agreement.

7. Inspection and Transfer of Public Improvements. Without modifying or limiting Developer's obligations under this Agreement, the City shall inspect and test the Public Improvements. The City shall have access to the Public Improvements site at all times to conduct any tests or inspections. The City's inspection rights shall not exceed twenty (20) days from completion of the same. Thereafter, unless the City has objected to the design, development, and construction of such Public Improvements, such design, development, and construction shall be deemed approved. Developer shall require its employees, contractors and agents to comply with all instructions given by the City during inspection or construction of the Public Improvements. Any deficiencies in the Public Improvements shall be corrected by Developer at its sole cost and expense. Upon completion of the Public Improvements to the satisfaction of the City, the Public Improvements shall be presented to the City for dedication and acceptance. The City shall accept the Public Improvements ("Public Improvements Acceptance") if it determines that it was constructed in accordance with approved plans, specifications and contract documents, that it operates satisfactorily, all unconditional waivers and releases of mechanics' liens have been provided, and that all other requirements of this Agreement have been satisfied. Upon acceptance of the Public Improvements, Developer shall assign to the City all of Developer's rights and remedies, including warranties, as set forth in the approved contract documents. Developer will be required to convey title to the Public Improvements to the City. The form of said title shall be determined by the City.

8. Liability for Public Improvements Prior to Public Improvements Acceptance. Until the Public Improvements Acceptance, Developer shall be solely responsible for all damage to the Public Improvements, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole or active negligence or willful misconduct of the City, its agents or employees.

9. Guarantee. Developer shall guarantee all work and materials for the Public Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of the Public Improvements Acceptance. Developer shall repair or remove and replace any and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship or materials within the one-year period, without any expense whatsoever to the City. In the event Developer fails to comply with the above-mentioned provisions within thirty (30) days after being notified in writing (or in cases of emergency, immediately), the City shall be authorized to proceed to have the defects remedied and made good at the sole cost and expense of Developer, who is hereby contractually bound to pay the costs and charges therefor immediately upon demand. Such action by the City will not relieve Developer of the guarantee required by this section. This section shall not, in any way, limit the liability of Developer or any other party for any latent and patent design or construction defects in the work subsequently discovered by the City.

10. Terms of Reimbursement

(a) Offsite Fee Reimbursement.

(i) The reimbursement amount for the Offsite Improvements shall be equal to design and construction costs for the Offsite Improvements ("Offsite Fee Reimbursement Amount"). The design costs shall include the design, permitting, and construction staking of the Offsite Improvements only and shall not include any such costs for the Developer Improvements ("Offsite Improvements Design Costs"). To establish the construction costs, the lowest bid received for construction and installation of the entire Public Improvements with 8" water line will be applied and prorated over the actual length of the Offsite Improvements ("Offsite Improvements Construction Costs").

(ii) The City shall provide the Developer water impact fee credits for the Calhoun Property in an amount equal to the Offsite Fee Reimbursement Amount. The Developer may then use the Offsite Fee Reimbursement Amount to offset water impact fees required by the City in developing the Calhoun Property. Notwithstanding the foregoing, in no case shall the Developer be entitled to use the Offsite Fee Reimbursement Amount for anything other than to offset water impact fees at the Calhoun Property or be entitled to a refund of the Offsite Fee Reimbursement Amount if the amount is more than the water impact fees required at the Calhoun Property.

(b) Upsize Cost Reimbursement.

(i) The City shall pay to the Developer costs for the construction and installation of the Upsize Improvements. To establish the reimbursement amount, the difference between the lowest bids for construction and installation of the entire Public Improvements with 8" water line and 12" water line will be determined, and this difference will be the reimbursement amount (the "Upsize Cost Reimbursement Amount").

(c) Reimbursement Procedures.

(i) Upon Public Improvements Acceptance, the Developer shall submit a written request for the Upsize Cost Reimbursement Amount and Offsite Fee Reimbursement Amount to the City for review and approval. The request shall include any document, requirement, evidence or information in the Developer's possession or under the Developer's control that City may reasonably request with regard to the Public Improvements and Public Improvements Acceptance. This includes without limitation, copies of the notice to proceed with the Public Improvements, notice of completion of the Public Improvements, any and all contracts and change orders entered into to complete the design and construction of the Public Improvements, invoices and checks for payment of the design and construction of the Public Improvements, and any and all other documents required by this Agreement. The City will review and approve, if acceptable, the reimbursement requests within thirty (30) calendar days following the date of submittal.

(ii) If the reimbursement request is deemed complete and in compliance with the provisions of this Agreement, City will remit payment to the Developer for the Upsize Cost Reimbursement Amount within the said thirty (30) calendar days following the reimbursement request being approved by the City and the City will establish an account for the

Offsite Fee Reimbursement Amount (“Offsite Fee Reimbursement Account”). The City shall not be responsible for the Developer Improvements.

(iii) Once the Offsite Fee Reimbursement Account is established, the Developer may use the account to offset water impact fees required by the City in developing the Calhoun Property. Prior to the establishment of the Offsite Fee Reimbursement Account and if requested by the Developer, the City, at its sole discretion, may provide the Developer an advance against the Offsite Fee Reimbursement Account. In that case, the advance amount will be determined based on actual costs spent by the Developer or a percentage of the completed Offsite Improvements.

(iv) The Offsite Fee Reimbursement Account shall terminate at the earlier of no remaining balance in the Offsite Fee Reimbursement Account, ten (10) years from the date the Offsite Fee Reimbursement Account is established, or no more water impact fees are required at the Calhoun Property.

(v) Upon payment of the Upsize Cost Reimbursement Amount and establishment of the Offsite Fee Reimbursement Account, the City shall have no further financial obligation to Developer and the Developer shall be entitled to no further compensation, payment, fee credit, offset or reimbursement of any kind from the City for the Public Improvements.

11. Term. This Agreement shall expire upon full payment of the Upsize Cost Reimbursement Amount and termination of the Offsite Fee Reimbursement Account, unless earlier terminated as provided herein; provided however, that the indemnification and insurance provisions contained herein shall survive termination of the Agreement and continue to govern the parties. Developer waives any right to reimbursement for the installation of the Public Improvements except as contained in this Agreement.

12. Standard of Care; Safety. Developer shall ensure that all work on the Public Improvements is performed in strict compliance with City-approved plans, specifications and contract documents. Developer shall also ensure that all work is performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals and contractors in the same discipline in the State of California. Developer shall procure the services of professionals and contractors skilled in the professional calling necessary to design and construct the Public Improvements. All employees and subcontractors working on the Public Improvements shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform such work on the Public Improvements, and all such licenses and approvals shall be maintained throughout the term of their work on the Public Improvements. Developer shall ensure that it and its consultants and contractors execute and maintain their work so as to avoid injury or damage to any person or property. In carrying out their work, they shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Public Improvements, a threat to the safety of persons or property, or any employee who fails or

refuses to perform his or her work in a manner acceptable to the City, shall be promptly removed from the Public Improvements.

13. Indemnification. Developer shall defend (with counsel of City's choice), indemnify and hold the City, its officials, officers, consultants employees and agents free and harmless from any and all claims, liabilities, losses, costs, expenses, damages or injuries to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Developer, its members, officials, officers, employees, agents, consultants and contractors arising out of or in connection with this Agreement or the design, construction or installation of the Public Improvements, including without limitation, the payment of all attorneys' fees and other related costs and expenses however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.. At a minimum, this indemnification provision shall apply to the fullest extent of any warranty or guarantee implied by law or fact, or otherwise given to Developer by Developer's design consultant(s) or contractor(s) for the Public Improvements. In addition, this indemnity provision and any such warranties or guarantees shall not limit any liability under law of such consultants or contractors. Without limiting the foregoing, this indemnity shall extend to any claims arising because Developer has failed to properly secure any necessary easements, land rights, contracts or approvals. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

14. Insurance.

(a) Requirement. Developer shall require all persons performing work on the Public Improvements, including its consultants, contractors, and subcontractors,, to procure and maintain, at their expense, until full and adequate completion of the Public Improvements, insurance against claims for injuries to persons or damages to property which may arise out of or in connection with the performance of their work or that of their agents, representatives, employees or subcontractors.

(b) Minimum Scope and Limits of Coverage. Such insurance shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employers' Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Such insurance shall have limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage (if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Public Improvements/location or the general aggregate limit shall be twice the required occurrence limit); (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the

Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

(c) Insurance Endorsements. The insurance policies shall contain the following provisions, or Developer or the primary insured shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(i) General Liability. The general liability policy shall be endorsed to state that: (A) the City, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to this Agreement or operations performed by or on behalf of the Developer, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees and agents or, if excess, shall stand in an unbroken chain of coverage excess of the primary insured's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees or agents shall be excess of the primary insured's insurance and shall not be called upon to contribute with it in any way.

(ii) Automobile Liability. The automobile liability policy shall be endorsed to state that: (A) the City, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the primary insured or for which the primary insured is responsible; and (B) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees and agents or, if excess, shall stand in an unbroken chain of coverage excess of the primary insured's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees or agents shall be excess of the primary insured's insurance and shall not be called upon to contribute with it in any way.

(iii) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the primary insured.

(iv) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after forty five (45) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees or agents.

(d) Professional Liability Insurance. All architects, engineers, consultants or design professionals working on the Public Improvements shall procure and maintain, for a period of five (5) years following completion of the Public Improvements, errors and omissions liability insurance with a limit of not less than \$1,000,000. This insurance shall be endorsed to include contractual liability.

(e) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees and agents.

(f) Deductibles and Self-Insurance Retentions. City may require that any deductibles or self-insured retentions must be declared to and approved by the City. Developer shall ensure that, at the option of the City, either: (A) the primary insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees and agents; or (B) the primary insured shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

(h) Verification of Coverage. Developer shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences on the Public Improvements. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

15. Control and Payment of Subordinates; Independent Contractor. All work on the Public Improvements shall be performed by Developer or under its supervision. Developer and its consultants will determine the means, methods and details of performing the work subject to the requirements of this Agreement. City retains Developer on an independent contractor basis and not as an employee. Developer retains the right to perform similar or different work for others during the term of this Agreement. Any additional personnel performing the work under this Agreement on behalf of Developer shall also not be employees of City, and shall at all times be under the exclusive direction and control of Developer or its consultants. All wages, salaries and other amounts due such personnel in connection with their performance of work under this Agreement and as required by law shall be paid by Developer or its consultants and contractors. Such entities shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

16. Termination. In the event either party defaults in the performance of any of its obligations under this Agreement, or materially breaches any of the provisions of this Agreement, the other party shall have the option to terminate this Agreement upon thirty (30) days prior written notice to the defaulting party.

17. Record Drawings. Prior to acceptance of the Public Improvements by the City, Developer shall provide the City with one copy of record drawings certified by a licensed engineer in the State of California as to accuracy and completeness. Developer shall be solely responsible and liable for insuring completeness and accuracy of the record drawings.

18. Labor/Prevailing Wages. Developer is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., and the implementing regulations promulgated thereunder (collectively, “Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements if it is determined that the Developer’s contract(s) with its contractor(s) to construct the Public Improvements are “public works” contracts under the Prevailing Wage Laws. It is the responsibility of the Developer to ensure that each contractor and subcontractor hired to construct the Public Improvements comply with all applicable requirements of the Prevailing Wage Laws. Developer agrees to defend, indemnify and hold the City and its officials, officers, employees and agents free and harmless from any claim or liability including, without limitation, damages, penalties, attorneys’ fees and court costs, arising from any failure or alleged failure to comply with these provisions of the Labor Code, including the Prevailing Wage Laws.

19. Attorneys’ Fees. In the event any action is commenced to enforce or interpret any term or condition of this Agreement, in addition to costs and any other relief, the prevailing party shall be entitled to its reasonable attorneys’ fees, expert fees and other reasonable costs of defense.

20. Developer Assignment. In no event shall the Developer assign or transfer any portion of this Agreement without the prior express written consent of City, which consent may be given or withheld in City’s sole discretion; provided, however, Developer shall be permitted to absolutely or collaterally assign its right to receive payments hereunder to any person or entity who acquires all or any part of the Property or who makes a loan secured by all or any part of the Property.

21. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

22. Invalidity and Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

23. Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

24. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

25. Labor Certification. By its signature hereunder, Developer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that Code. Developer agrees to comply with such provisions and to require its consultants to comply with such provisions before commencing any work on the Plans.

26. Time of Essence. Time is of the essence for each and every provision of this Agreement.

27. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.

28. Construction; Captions. Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

29. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

30. Notices. All notices permitted or required under this Agreement shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Such notices shall be mailed or otherwise delivered to the addresses set forth below, or at such other addresses as the respective parties may provide in writing for this purpose:

CITY OF COACHELLA

City Manager
City of Coachella
53990 Enterprise Way
Coachella, CA 92236

DEVELOPER

Tim Rogers
Tower Energy Group
1983 W. 190th St., No. 100
Torrance, CA 90504

Such notice shall be deemed made when personally delivered, upon fax confirmation of the sender, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, certified mail, return receipt requested, to the party at its applicable address.

31. Authority to Enter into Agreement. City and Developer warrant that they have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement and bind his or her respective party.

32. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

33. Integration. This Agreement represents the entire understanding of City and Developer as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered hereunder. This integrated Agreement may not be modified or altered except in writing signed by both parties hereto.

34. Severability and Waiver. The unenforceability, invalidity, illegality, or unconstitutionality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, illegal, or unconstitutional. Waiver by any party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

[Signatures on following pages]

**SIGNATURE PAGE TO REIMBURSEMENT AGREEMENT FOR PUBLIC
IMPROVEMENTS**

IN WITNESS WHEREOF, the parties have executed this Agreement as the dates set forth below.

TOWER ENERGY GROUP

THE CITY OF COACHELLA, a California
municipal corporation

By: _____

Its: _____

Date: _____

By: _____

Steven Hernandez
Mayor

Date: _____

ATTESTED TO:

By: _____

Angela M. Zepeda
City Clerk

APPROVED AS TO FORM:
Best Best & Krieger LLP

By: _____

Carlos Campos
City Attorney

EXHIBIT A
Legal Description of Developer Property

EXHIBIT "A"
Legal Description
of
Developer Property

BEING PARCEL 1 OF PARCEL MAP NO. 37562, AS SHOWN BY MAP ON FILE IN BOOK _____ OF PARCEL MAPS, AT PAGES _____ THROUGH _____, INCLUSIVE THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN SECTION 17, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 4 OF MAPS, AT PAGE 53, THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

CONTAINING 3.34 ACRES NET, 4.24 ACRES GROSS, MORE OR LESS.

PREPARED UNDER MY SUPERVISION



Michael E. Johnson, L.S. 7673

4/29/20

Date



Prepared by: LB
Checked by: mf

EXHIBIT A-1
Legal Description of Calhoun Property

Title No. 11-725141937-B-PP
Locate No. CAFNT0972-0972-0051-0725141937

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF COACHELLA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THE SOUTH HALF OF LOT 14 IN SECTION 36, TOWNSHIP 5 SOUTH, RANGE 7 EAST OF THE COACHELLA LAND AND WATER COMPANY'S SUBDIVISION, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AS SHOWN BY MAP ON FILE IN BOOK 4 PAGE(S) 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT THE WESTERLY RECTANGULAR 20.00 FEET TO THE EASTERLY RECTANGULAR 25.00 FEET OF LOT 14, SECTION 36, TOWNSHIP 5 SOUTH, RANGE 7 EAST, SAN BERNARDINO BASE AND MERIDIAN OF THE COACHELLA LAND AND WATER COMPANY'S SUBDIVISION AS SHOWN BY MAP ON FILE IN BOOK 4 PAGE(S) 53 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA AS CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED DECEMBER 4, 1946 IN BOOK 806, PAGE 108 OF OFFICIAL RECORDS OF SAID COUNTY. SAID RECTANGULAR 20.00 FEET ADJOINS THE WESTERLY LINE OF THE 40.00 FOOT ROAD DESCRIBED TO RIVERSIDE COUNTY BY COACHELLA LAND WATER COMPANY AS SHOWN BY MAP ON FILE IN BOOK 233 PAGE(S) 220 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPT THAT PORTION THEREOF INCLUDED WITHIN THE LAND CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED FROM COACHELLA LAND & WATER COMPANY RECORDED NOVEMBER 14, 1906 IN BOOK 233, PAGE 220 OF DEEDS.

ALSO EXCEPT AN UNDIVIDED 1/3 INTEREST IN THAT PORTION WITHIN THE FOLLOWING DESCRIBED WELLSITE:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 14, IDENTICAL WITH THE SOUTHEAST CORNER OF LOT 13, AS SHOWN BY RECORD OF SURVEY ON FILE IN BOOK 18 PAGE(S) 70 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE NORTH 00° 00' 11" EAST, 183.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";
THENCE SOUTH 89° 58' 00" EAST, 20.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 89° 58' 00" EAST, 30.00 FEET;
THENCE NORTH 00° 02' 00" EAST, 30.00 FEET;
THENCE SOUTH 89° 58' 00" WEST, 30.00 FEET;
THENCE SOUTH 00° 02' 00" WEST, 30.00 FEET TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT ANY PORTION IN THE PUBLIC STREET (50TH AVENUE) ON THE SOUTH;

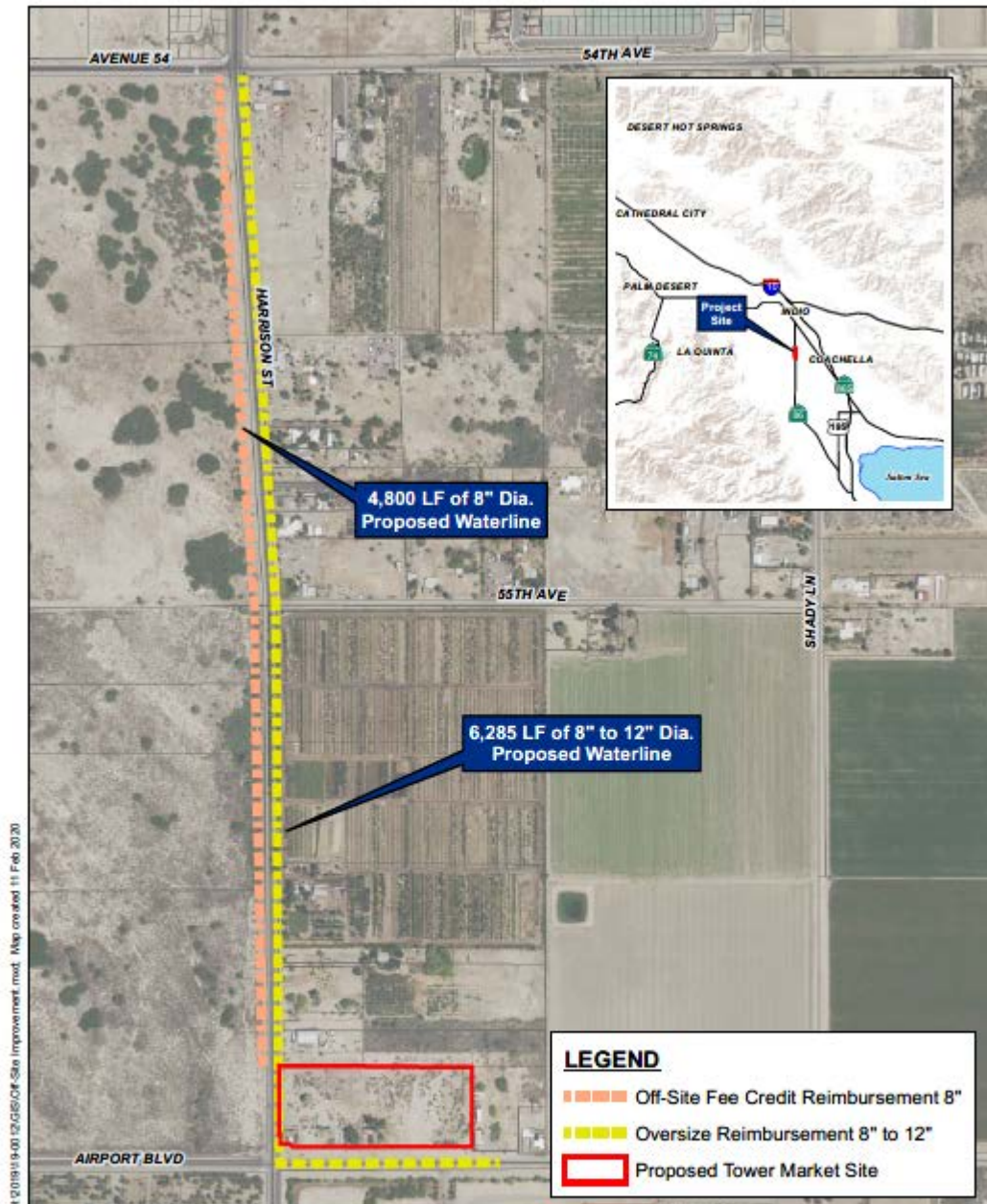
ALSO EXCEPT THOSE PORTIONS DESCRIBED IN THE DEED TO THE COUNTY OF RIVERSIDE RECORDED APRIL 09, 1981 AS INSTRUMENT NO. 63154 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT, HOWEVER, TO THE UNITED STATES ALL URANIUM, THORIUM OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PARTICULARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, TOGETHER WITH THE RIGHT OF THE UNITED STATES THROUGH ITS AUTHORIZED AGENTS OR REPRESENTATIVES AT ANY TIME TO ENTER UPON THE LAND AND PROSPECT FOR, MINE AND REMOVE THE SAME AS RESERVED BY THE UNITED STATES IN DEED RECORDED MARCH 25, 1957 AS INSTRUMENT NO. 21676 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 612-280-018-6

EXHIBIT B

Description of Public Improvements



Tower Market Off-Site Water Improvements Reimbursement and Fee Credit Agreement

City of Coachella - Harrison St. and Airport Blvd.

ALBERT A.
WEBB
ASSOCIATES

EXHIBIT C

FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Tower Energy Group (hereinafter referred to as “Developer”) has awarded to _____, (hereinafter referred to as the “Contractor”) an agreement for _____ (hereinafter referred to as the “Project”).

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Developer in the sum of _____ DOLLARS, (\$_____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Developer, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by Developer, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect Developer from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit Developer’s rights or the Contractor or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Developer in enforcing such obligation.

Whenever Contractor shall be, and is declared by Developer to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at Developer's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and Developer, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by Developer under the Contract and any modification thereto, less any amount previously paid by Developer to the Contractor and any other set offs pursuant to the Contract Documents.

3. Permit Developer to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by Developer under the Contract and any modification thereto, less any amount previously paid by Developer to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that Developer may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if Developer, when declaring the Contractor in default, notifies Surety of Developer's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$ _____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

FORM OF PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Tower Energy Group (hereinafter designated as the "Developer"), has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No.** _____ (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Developer in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Developer in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition,

alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the Developer and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate) Title _____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above