

## LOAN AGREEMENT

This LOAN AGREEMENT (this “Loan Agreement”), dated October 8, 2024, is between JPMORGAN CHASE BANK, N.A., a national banking association duly organized and existing under the laws of the United States of America, as lender (including its successors and assigns, the “Lender”), and the CITY OF ALAMEDA, a charter city and municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California, as borrower (the “City”).

### BACKGROUND:

1. To finance a portion of the costs of the acquisition, construction, installation and equipping of various public capital improvements to Alameda Point, the Alameda Public Financing Authority (the “Authority”) previously issued its \$9,080,000 Alameda Public Financing Authority Variable Rate Demand Revenue Bonds, 2003 Series A (Alameda Point Improvement Project) (the “Series A Bonds”), and its \$4,360,000 Alameda Public Financing Authority Taxable Variable Rate Demand Revenue Bonds, 2003 Series B (Alameda Point Improvement Project) (the “Series B Bonds,” and, with the Series A Bonds, the “Prior Bonds”).

2. The City desires to refund, in full, the Prior Bonds into a new fixed-rate obligation prior to the expiration date of the letter of credit securing the Prior Bonds, which letter of credit was issued by Wells Fargo Bank, National Association (“Wells Fargo”) with a stated expiration date of October 18, 2024.

3. The City is authorized to enter into this Loan Agreement and to borrow amounts hereunder for the foregoing purposes under the laws of the State of California, including the provisions of Articles 10 and 11 of Chapter 3, Part 1, Division 2 of Title 5 of the California Government Code, commencing with Section 53570.

### AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Lender formally covenant, agree and bind themselves as follows:

## ARTICLE I DEFINITIONS AND APPENDICES

SECTION 1.1. *Definitions.* All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Loan Agreement.

“Alameda Point Lease Revenue Special Fund” has the meaning given it in Section 3.6(c).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the City from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means any of the Laws relating to terrorism or money laundering, including Executive Order No. 13224, the PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 as codified in 31 U.S.C. 5311-5314e, as now and hereafter in effect, or any successor statute.

“Closing Date” means the date of execution and delivery of this Loan Agreement by the City and the Lender, being October 8, 2024.

“Default Rate” means the then-applicable interest rate on the applicable Loan, plus 4.00%.

“Determination of Taxability” means, and shall be deemed to have occurred on the first to occur of the following with respect to the Series A Loan:

(i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;

(ii) on the date when the Lender notifies the City that it has received a written opinion from Special Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Special Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Lender, the City shall deliver to the Lender a ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the City shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or

(iv) on the date when the City shall receive notice from the Lender that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest on the Series A Loan Repayments as includable in the gross income of the Lender due to the occurrence of an Event of Taxability and the Lender has provided a copy of document(s) received from the Internal Revenue Service to the City;

*provided, however,* that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however,* that upon demand from the Lender following an

event listed in subparagraphs (i), (ii), (iii) or (iv), the City shall reimburse the Lender for any payments, including any taxes, interest, penalties or other charges, Lender shall be obligated to make to the Internal Revenue Service as a result of the Determination of Taxability.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“Event of Default” means any of the events of default as defined in Section 5.1.

“Event of Taxability” means any action taken or not taken by the City which has the effect of causing interest paid or payable on the Series A Loan to be includable, in whole or in part, in the gross income of the recipient thereof for federal income tax purposes.

“Federal Securities” means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“Fiscal Year” means each twelve-month period during the Term of this Loan Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Law” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“Lender” means JPMorgan Chase Bank, N.A., a national banking association duly organized and existing under the laws of the United States of America, and its successors or assigns.

“Loan” means, collectively, the Series A Loan and the Series B Loan.

“Loan Agreement” means this Loan Agreement, between the Lender and the City, as may be amended in accordance with the terms hereof.

“Loan Repayment Date” means December 1, 2024, and each succeeding June 1 and December 1 until repayment of the Loan in full.

“Loan Repayments” means all payments required to be paid by the City under Section 3.4.

“Loan Year” means the 12-month period ending December 1 of each year, except that the first Loan Year ends on December 1, 2024.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (i) the assets or operations of the City from which the Revenues are generated, (ii) the ability of the City to carry out its public purposes in the manner conducted as of the date of this Loan Agreement or to meet or perform its obligations under this Loan Agreement on a timely basis, or (iii) the validity or enforceability of this Loan Agreement.

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Loan Year by totaling the following amounts for such Loan Year:

(a) the principal amount of the Loan Repayments and Parity Debt (if any) coming due and payable by their terms in such Loan Year; and

(b) the amount of interest which would be due during such Loan Year on the aggregate principal amount of the Loan Repayments and Parity Debt (if any) which would be outstanding in such Loan Year assuming the Loan Repayments and Parity Debt (if any) is paid as scheduled;

*provided, however,* that (1) for purposes of Section 3.6(d)(iii) (Surplus Account; 150% MADS Coverage Test), variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the calculation period, and (2) for purposes of Section 3.7 (Additional Parity Debt), variable rate indebtedness shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least 12 months, the average rate over the 12 months immediately preceding the date of calculation, and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer “Revenue Bond Index” (or comparable index if no longer published) plus 50 basis points, or (B) if interest is not so excludable, the interest rate on direct U.S. treasury obligations with comparable maturities plus 50 basis points.

“Maximum Rate” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

“OFAC Lists” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224 and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable executive orders.

“Parity Debt” means any notes, bonds, installment sale agreements or other obligations of the City payable from the Revenues on parity with the Loan Repayments.

“Revenues” means the rental payments paid by various tenants to the City for the use of certain land, buildings and equipment of the City at Alameda Point (the former Alameda Naval Air Station), as in force on the date hereof and listed in Appendix B attached hereto, together with each additional lease as is executed by the City and additional tenants.

“Series A Loan” means the loan made by the Lender to the City in the aggregate principal amount of \$ \_\_\_\_\_ under Section 3.1.

“Series B Loan” means the loan made by the Lender to the City in the aggregate principal amount of \$ \_\_\_\_\_ under Section 3.1.

“Special Counsel” means (i) Jones Hall, A Professional Law Corporation, or (ii) any other attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published thereunder.

“Term of this Loan Agreement” or “Term” means the time during which this Loan Agreement is in effect, as provided in Section 3.3.

SECTION 1.2. *Appendices.* The appendices attached to, and by reference made a part of, this Loan Agreement are the following:

APPENDIX A: Schedule of Loan Repayments

APPENDIX B: List of Alameda Point Leases

## **ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS**

The City represents, warrants and covenants to the Lender as follows:

- (a) Due Organization and Existence. The City is a charter city and municipal corporation, duly organized and existing under its charter and the Constitution and laws of the State of California
- (b) Authorization. The City is authorized under the laws of the State of California to enter into this Loan Agreement, to enter into the transactions contemplated hereby and to carry out its obligations hereunder, and the City Council of the City has duly adopted its resolution authorizing the execution and delivery of this Loan Agreement.
- (c) No Violations. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, other than as set forth herein.
- (d) Prior Indebtedness. Aside from the Prior Bonds, the City has not issued or incurred any obligations which are currently outstanding payable out of the Revenues on a basis that is senior to, or on parity with, the Loan Repayments.
- (e) Financial Condition. The financial statements of the City for the year ended June 30, 2023, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the City's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Lender, there has been no material adverse change in the City's financial condition subsequent to June 30, 2023.
- (f) No Financial Advisory or Fiduciary Relationship. The City represents, warrants and covenants that: (i) the transaction contemplated herein is an arm's length commercial transaction among the City and the Lender and its affiliates, (ii) in connection with such transaction, the Lender and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), agent or a fiduciary of the City, (iii) the Lender and its

affiliates are relying on the bank exemption in the Municipal Advisor Rules, (iv) the Lender and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Lender, or any affiliate of the Lender, has provided other services or advised, or is currently providing other services or advising the City on other matters), (v) the Lender and its affiliates have financial and other interests that differ from those of the City, and (vi) the City has consulted with their own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

- (g) Financial Condition. The financial statements of the City for the year ended June 30, 2023, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the City's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Lender, there has been no material adverse change in the City's financial condition subsequent to June 30, 2023.
- (h) No Litigation. There is no action, suit, proceeding, inquiry, to the best knowledge of the undersigned, or investigation before or by any court or federal, state, educational or other Governmental Authority pending or, to the knowledge of the City, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Loan Agreement or upon the ability of the City to make the Loan Repayments from the Revenues, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, educational or other Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement or the ability of the City to make the Loan Repayments from the Revenues.
- (i) No Defaults. To the best knowledge of the City, the City has never not appropriated or defaulted under any of its payment or performance obligations or covenants, either under any loan agreement of the same general nature as this Loan Agreement, or under any of its bonds, notes, or other debt obligations.
- (j) Power to Lease. The City is the owner in fee of title, or otherwise has the right to lease the land, buildings and equipment leased by the City at Alameda Point from which the Revenues are generated. Except for the leases described in Appendix B, no lien or encumbrance on such property materially impairs the City's use of the property for the purposes for which it is, or may reasonably be expected to be, used.

- (k) Accuracy of Information. All information, reports and other papers and data furnished by the City to the Lender were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Lender a true and accurate knowledge of the subject matter and were provided in expectation of the Lender's reliance thereon in entering into the transactions contemplated by this Loan Agreement. No fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future have a material adverse effect on the City, which has not been set forth in the financial statements previously furnished to the Lender or in other such information, reports, papers and data or otherwise disclosed in writing to the Lender prior to the Closing Date. Any financial, budget and other projections furnished to the Lender by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of its future financial performance.
- (l) Power to Set and Collect Rents. The City is empowered to set and collect the rents due and owing from the tenants set forth in Appendix B, without approval by any state or local government agency other than the City Council of the City.
- (m) Environmental Laws. In the ordinary course of its business, the City conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, including, but not limited to Alameda Point, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the City does not believe that Environmental Laws are likely to have a Material Adverse Effect.
- (n) No Sovereign Immunity. The City is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or the Revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Loan Agreement, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or the Revenues



might otherwise be made subject in any action, suit or proceeding relating to this Loan Agreement, and no such immunity (whether or not claimed) may be attributed to the City or the Revenues.

- (o) Insurance. As of the Closing Date, the City maintains such insurance, including self-insurance, as is required by this Loan Agreement.
- (p) Anti-Corruption and Anti-Terrorism Laws. The City and, to the knowledge of the City, its City Councilmembers, employees and agents that will act in any capacity in connection with or benefit from this Loan Agreement, are in compliance with Anti-Corruption Laws and Anti-Terrorism Laws in all material respects. None of (a) the City, any of its City Councilmembers or employees, or (b) to the knowledge of the City, any agent of the City that will act in any capacity in connection with or benefit from this Loan Agreement, is a sanctioned person (as defined in the Anti-Corruption Laws and Anti-Terrorism Laws). The transaction contemplated by this Loan Agreement does not violate any Anti-Corruption Laws or any Anti-Terrorism Laws.
- (q) Compliance with Laws, Etc. The City is in compliance with its investment policy and all Laws applicable to the City, non-compliance with which could reasonably be expected to have a Material Adverse Effect.

### **ARTICLE III TERMS OF THE LOAN**

SECTION 3.1. *Obligation to Make Loan (Series A Loan and Series B Loan)*. The Lender hereby agrees to lend to the City, and the City hereby agrees to borrow from the Lender, the Series A Loan in the amount of \$\_\_\_\_\_ and the Series B Loan in the amount of \$\_\_\_\_\_, in each case, under the terms and provisions set forth in this Loan Agreement.

SECTION 3.2. *Application of Loan Proceeds*.

(a) Transfers Related to Prior Bonds and Costs of Issuance. The Lender hereby agrees on the Closing Date to wire:

(i) \$\_\_\_\_\_ to Wells Fargo, as reimbursement for amounts owed by the City and Authority with respect to the draw on the direct-pay letter of credit issued by Wells Fargo to secure the repayment of the Prior Bonds; and

(ii) \$\_\_\_\_\_, constituting the remainder of the proceeds of the Loan, to not more than five (5) payees set forth in a written certificate signed by an authorized officer of the City and delivered to the Lender, as costs of issuance related to the Loan Agreement.

(b) Payment of Fees. The fees and disbursements of counsel to the City, the fees and disbursements of the placement agent, fees of the California Debt and

Investment Advisory Commission (CDIAC), fees of Lender's counsel, and other miscellaneous expenses of the City incurred in connection with this Loan Agreement (if any) shall all be the obligation of the City. The Lender shall have no responsibility for any expenses incurred by the City associated with this Loan Agreement, including, but not limited to, the expenses identified above as the obligation of the City.

SECTION 3.3. *Term.* The Term of this Loan Agreement commences on the Closing Date, and ends on the date on which the Loan is paid in full or provision for such payment is made as provided herein.

SECTION 3.4. *Loan Repayments.*

(a) Obligation to Pay Series A Loan. The City hereby agrees to repay the Series A Loan to the Lender in the aggregate principal amount of \$\_\_\_\_\_, together with interest on the unpaid principal balance thereof. Interest on the unpaid principal balance of the Series A Loan shall be calculated at a rate of interest of \_\_\_\_\_% on the basis of an actual/360-day basis and shall be paid semiannually on each December 1 and June 1 until the maturity thereof; *provided however*, that upon the occurrence of an Event of Taxability, interest shall be calculated at the rate of interest due on the Series B Loan; *provided, further, however*, that upon the occurrence and continuance of an Event of Default, interest shall be calculated at the Default Rate.

(b) Obligation to Pay Series B Loan. The City hereby agrees to repay the Series B Loan to the Lender in the aggregate principal amount of \$\_\_\_\_\_, together with interest on the unpaid principal balance thereof. Interest on the unpaid principal balance of the Series B Loan shall be calculated at a rate of interest of \_\_\_\_\_% on the basis of an actual/360-day basis and shall be paid semiannually on each December 1 and June 1 until the maturity thereof; *provided, however*, that upon the occurrence and continuance of an Event of Default, interest shall be calculated at the Default Rate.

(c) Aggregate Loan Repayments. The Loan Repayments, consisting of amounts due with respect to the Series A Loan and the Series B Loan, shall be payable in semi-annual Loan Repayments on Loan Repayment Dates in the amounts set forth on Appendix A.

(d) No Optional Prepayment. Without limiting the provisions of Section 6.1, the Loan Repayments are not subject to optional prepayment.

SECTION 3.5. *Nature of City's Obligations.*

(a) Special Obligation. The City's obligation to pay the Loan Repayments is a special obligation of the City limited solely to the Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Revenues for the payment of the Loan Repayments, and no other funds or property of the City are liable for the payment of the Loan Repayments. Notwithstanding the foregoing provisions, nothing herein prohibits the City voluntarily from making any payment hereunder from any source of available funds of the City.

(b) Obligations Absolute. The obligation of the City to pay the Loan Repayments from the Revenues and the obligation of the City to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any

defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City or the Lender of any obligation to the City or otherwise, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Lender. Until such time as all of the Loan Repayments have been fully paid, the City:

- (i) will not suspend or discontinue payment of any Loan Repayments,
- (ii) will perform and observe all other agreements contained in this Loan Agreement, and
- (iii) will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to City property at Alameda Point, the taking by eminent domain of title to or temporary use of any City property at Alameda Point, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement.

(c) No Registration, CUSIP, etc. The Lender and City agree that: (i) this Loan Agreement is not being registered under the Securities Act of 1933 and is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state; (ii) the Lender will hold this Loan Agreement as one single instrument; (iii) no CUSIP numbers will be obtained for this Loan Agreement; (iv) no final official statement has been prepared in connection with the private placement of this Loan Agreement; (v) this Loan Agreement will not close through the DTC or any similar repository and will not be in book entry form; (vi) this Loan Agreement is not listed on any stock or other securities exchange; and (vii) this Loan Agreement will not be rated.

### SECTION 3.6. *Pledge and Application of Revenues.*

(a) Subject only to the provisions of this Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and any other amounts held in any fund or account established pursuant to this Loan Agreement (except the Surplus Account) are hereby pledged to secure the payment of the Loan Repayments in accordance with the terms and conditions of this Loan Agreement. This pledge shall constitute a first lien on and security interest in such assets and, in accordance with Government Code Section 5451, shall attach, be perfected and be valid and binding from and after the Closing Date, without any physical delivery thereof or further act of the City or the Lender.

(b) Subject to the provisions of this Loan Agreement relating to the transfer of funds into the Surplus Account, the City hereby:

- (i) transfers in trust, grants a security interest in and assigns to the Lender, for the benefit of the Lender, all of the Revenues and all of the rights of the City in the Revenues;

(ii) covenants and agrees that the Lender shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the City shall be deemed to be held, and to have been collected or received, by the City as the agent of the Lender and shall forthwith be paid by the City to the Lender;

(iii) covenants and agrees that the Lender shall be entitled to and may take all steps, actions and proceedings which the Lender determines to be reasonably necessary in its judgment to enforce, either jointly with the City or separately, all of the rights of the City in the Revenues;

(iv) grants the Lender a security interest in all deposits, credits and deposit accounts (including all account balances, whether provisional or final and whether or not collected or available) of the City with the Lender or any affiliate of the Lender to the extent they qualify as Revenues. In addition to, and without limitation of, any rights of the Lender under applicable Law, if any Event of Default occurs, the City authorizes the Lender to offset and apply all such deposits and other amounts toward the payment of the Loans, whether or not the Loans, or any part thereof, are then due and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to the Lender; and

(v) agrees that if any payment by or on behalf of the City to the Lender, or the Lender's exercise of its right of setoff described in Section 3.6(b)(iv), is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, the obligation originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

(c) There is hereby established a special fund to be known as the "Alameda Point Lease Revenue Special Fund," and within such fund the "Interest Account," "Principal Account" and "Surplus Account," each of which funds and accounts shall be held by the City as a separate fund or account, as applicable, apart from all other funds and accounts of the City. The City shall deposit all Revenues in the Alameda Point Lease Revenue Special Fund promptly upon the receipt thereof. Prior to the payment in full of the Loan Repayments and Parity Debt (if any), the City shall not have any beneficial right or interest in the moneys on deposit in the Alameda Point Lease Revenue Special Fund, except only as provided in this Loan Agreement and with respect to Parity Debt, and such moneys shall be used and applied as set forth herein and in the documents pursuant to which the Parity Debt (if any) is issued or incurred.

(d) On or before the first day of each month, the City shall transfer from the Alameda Point Lease Revenue Special Fund into the following respective accounts, the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(i) Interest Account. The City shall transfer from the Alameda Point Lease Revenue Special Fund into the Interest Account, an amount equal to one-sixth (1/6) of the amount of interest coming due and payable on the next succeeding Loan Repayment Date with respect to the Loan Repayments and Parity Debt (if any); *provided, however*, that for the first Loan Repayment Date, one-half (1/2) of the amount required to be paid on the first Loan Repayment Date shall be deposited on or before November 1, 2024 and the remaining one-half (1/2) shall be deposited on or before December 1, 2024. No deposit need be made into the Interest Account if the amount contained therein (including capitalized interest and interest earnings thereon) is at least equal to the interest coming due and payable with respect to the Loan Repayments and Parity Debt (if any) on the next succeeding Loan Repayment Date.

Amounts in the Interest Account shall be used and withdrawn by the City on each Loan Repayment Date solely for the purpose of paying interest with respect to the Loan Repayments and Parity Debt (if any) as it becomes due and payable.

(ii) Principal Account. The City shall transfer from the Alameda Point Lease Revenue Special Fund into the Principal Account, an amount equal to one-sixth (1/6) of the amount of principal coming due and payable on the next succeeding Loan Repayment Date with respect to the Loan Repayments and Parity Debt (if any); *provided, however*, that for the first Loan Repayment Date, one-half (1/2) of the amount required to be paid on the first Loan Repayment Date shall be deposited on or before November 1, 2024 and the remaining one-half (1/2) shall be deposited on or before December 1, 2024. No deposit need be made into the Principal Account if the amount contained therein (including interest earnings thereon) is at least equal to the principal coming due and payable with respect to the Loan Repayments and Parity Debt (if any) on the next succeeding Loan Repayment Date.

Amounts in the Principal Account shall be used and withdrawn by the City on each Loan Repayment Date solely for the purpose of paying principal with respect to the Loan Repayment and Parity Debt (if any) as it becomes due and payable.

(iii) Surplus Account; 150% MADS Coverage Test. Following the foregoing deposits, any remaining Revenues shall be released from the pledge and lien hereunder (and under any documents to which Parity Debt is issued or incurred (if any)), and shall be transferred by the City from the Alameda Point Lease Revenue Special Fund into the Surplus Account. The City may use amounts in the Surplus Account for any lawful purposes.

Notwithstanding the foregoing clause (iii), prior to depositing Revenues into the Surplus Account, on or before the first day of each month, the City shall compute the debt service coverage ratio (Revenues divided by Maximum Annual Debt Service with respect to the Loan Repayments and Parity Debt (if any)) for the then-current six-month Loan Repayment period and next succeeding six-month Loan Repayment period, assuming Revenues based upon the most current adopted budget of the City for the collection of the Revenues. If such computations indicate that Revenues are not, for such then-current monthly period, and will not

be, for such next succeeding monthly period, at least equal to one hundred fifty percent (150%) of Maximum Annual Debt Service with respect to the Loan Repayments and Parity Debt (if any), in lieu of transferring amounts to the Surplus Account, the City shall maintain in the Alameda Point Special Revenue Fund the amounts required such that Revenues (calculated for such then-current monthly period and such next succeeding monthly period) would be at least equal to one hundred fifty percent (150%) of Maximum Annual Debt Service with respect to the Loan Repayments and Parity Debt (if any). If the retention of moneys in the Alameda Point Special Revenue Fund would not be sufficient to permit Revenues to be at least equal to one hundred fifty percent (150%) of Maximum Annual Debt Service with respect to the Loan Repayments and Parity Debt (if any) for such current monthly period or for such next succeeding monthly period, the City shall, following the next succeeding monthly period, again retain amounts in the Alameda Point Special Revenue Fund, and shall continue to do so for each monthly period until Revenues are at least equal to one hundred fifty percent (150%) of Maximum Annual Debt Service with respect to the Loan Repayments and Parity Debt (if any).

SECTION 3.7. *Additional Parity Debt.* In addition to the Loan, the City may issue or incur additional Parity Debt payable from the Revenues on a parity with the Loan Repayments, subject to the following requirements, which shall be conditions precedent to the issuance or incurrence of such Parity Debt:

- (a) the City shall be in compliance with all covenants set forth in this Loan Agreement;
- (b) Revenues for the then-current Loan Year shall be at least equal to 150% of Maximum Annual Debt Service on the Loan Repayments and Parity Debt which will be outstanding following the issuance of such Parity Debt; and
- (c) the City shall have received the prior written consent of the Lender, such consent not to be unreasonably withheld, conditioned or delayed.

SECTION 3.8. *Maximum Rate.* Anything in this Loan Agreement to the contrary notwithstanding, the amount of interest payable hereunder shall not exceed the Maximum Rate. If the applicable interest rate would exceed the Maximum Rate, then (a) such interest rate will not exceed but will be capped at such Maximum Rate and (b) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any obligation hereunder will bear interest at the Maximum Rate until the earlier of (i) payment to the Lender of an amount equal to the amount which would have been payable but for the limitation set forth in this Section 3.8 and (ii) the end of the Term. At the end of the Term, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by law, City shall pay to the Lender a fee in an amount equal to the amount which would have payable but for the limitation set forth in this Section 3.8 that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

## **ARTICLE IV COVENANTS OF THE CITY**

SECTION 4.1. *Release and Indemnification Covenants.* The City shall indemnify and hold the Lender and its officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on or about any property of the City at Alameda Point,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Loan Agreement,
- (c) any intentional misconduct or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to any property of the City at Alameda Point, and
- (d) any intentional misconduct or negligence of any lessee or other occupant of any property of the City at Alameda Point.

No indemnification is made under this Section 4.1 or elsewhere in this Loan Agreement for willful misconduct, gross negligence, or breach of duty under this Loan Agreement by the Lender, its officers, agents, employees, successors or assigns. The provisions of this Section shall survive the termination of this Loan Agreement.

SECTION 4.2. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the City property at Alameda Point as is customarily maintained with respect to properties of like character against accident to, loss of or damage to such property. All amounts collected from insurance against accident to or destruction of any portion of the City property at Alameda Point shall be used to repair or rebuild such damaged or destroyed portion, and to the extent not so applied, shall be applied to pay the Loan Repayments or any Parity Debt in amounts determined by the City. The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City and the Lender. Any insurance required to be maintained hereunder may be maintained by the City in the form of self-insurance or in the form of participation by the City in a program of pooled insurance.

SECTION 4.4. *Records and Accounts; Reporting Obligations.*

(a) *Records and Accounts.* The City shall keep proper books of records and accounts of the Revenues, separate from all other records and accounts, in which complete and correct entries are made of all transactions relating to the Revenues. Said books shall, upon prior request, be subject to the reasonable inspection of the Lender.

(b) *Audited Financial Statements.* The City shall cause the books and accounts relating to the Revenues to be audited annually by an independent certified

public accountant or firm of certified public accountants, not more than 270 days after the close of each Fiscal Year, and shall furnish a copy of such report to the Lender; *provided, however*, that the audit of the transactions relating to the Revenues may be included as part of a general City-wide audit.

(c) *Updates to List of Tenants (Appendix B)*. In connection with the delivery of its audited financial statements to the Lender in accordance with Section 4.4(b), the City shall also provide the Lender an updated list of the tenants of the City at Alameda Point, in the form of Appendix B.

(d) *Annual Budget and Amendments*. The City shall provide to the Lender (i) a copy of the City's annual budget, as adopted or amended, within 30 days of such adoption or amendment and (ii) in a reasonably timely manner, such other financial or operational information of the City as requested by the Lender from time-to-time.

(e) *Bi-Annual Debt Service Coverage Ratio*. Within 30 days after the end of each Fiscal Year and each six-month period thereafter, the City shall deliver to the Lender a report showing (i) the ratio of Revenues received to Debt Service for the six-month period and (ii) the ratio of Revenues expected to be received to Debt Service for the subsequent six-month period.

#### SECTION 4.5. *Collection of Rents.*

(a) *Rate Covenant*. The City shall take any and all actions necessary such that Revenues in each Fiscal Year shall equal an amount at least sufficient to pay the Loan Repayments under this Loan Agreement and amounts due with respect to Parity Debt (if any).

(b) *Rent Abatement*. Except as required by applicable Law, the City shall not offer rent abatement to any tenants generating any portion of the Revenues if doing so would impair the City's ability to pay the Loan Repayments under this Loan Agreement and amounts due with respect to Parity Debt (if any).

SECTION 4.6. *No Priority for Additional Obligations; Compliance with Parity Debt*. The City may not issue or incur any bonds or other obligations having any priority in payment of principal or interest out of the Revenues over the Loan Repayments. The City shall observe and perform all of the covenants, agreements and conditions on its part required to be observed and performed with respect to any future Parity Debt, if any. The City shall not take or omit to take any action within its control which would, or which if not corrected with the passage of time would, constitute an event of default with respect to any Parity Debt.

SECTION 4.8. *Assignment by the Lender*. The Lender has the right to assign its interests herein, but no such assignment will be effective as against the City unless and until the Lender provides the City written notice thereof. The City shall pay all Loan Repayments hereunder under the written direction of the Lender named in the most recent assignment or notice of assignment provided to the City. During the Term of this Loan Agreement, the City shall keep a complete and accurate record of all such notices of assignment.



The Lender's right, title and interest in and to this Loan Agreement may be participated, assigned and reassigned by the Lender in whole to one or more subsequent assignees, subject to the limitations set forth in this Section 4.8, without the necessity of obtaining the consent of the City. The Lender acknowledges and agrees that the restrictions and limitations on transfer as provided in this Section 4.8 shall apply to the first and subsequent assignees of any of the Lender's right, title and interest in, to and under this Loan Agreement. Any such assignment, transfer or conveyance (i) shall be made only to an investor which is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "Accredited Investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933 Act and is purchasing its right, title and interest in and to this Loan Agreement for its own account with no present intention to resell its interest herein; (ii) shall not require the City to make Loan Repayments to, send notices to or otherwise deal with respect to matters arising under this Loan Agreement with any entity other than the Lender or a subsequent entity to whom the Lender transfers its right, title and interest hereunder in whole, and (iii) shall be made only to investors who complete and submit to the City a letter substantially in the form of the letter that the Lender has signed on the Closing Date. Neither the Lender nor any subsequent assignee may participate out any interest held by it in this Loan Agreement other than in accordance with this Section 4.8. No assignment, transfer or conveyance of any of the Lender's rights hereunder shall be effective until such subsequent assignee has executed a letter substantially in the form of the letter that the Lender has signed on the Closing Date.

SECTION 4.9. *Assignment by the City.* Neither the Loan nor this Loan Agreement may be assigned by the City, other than to a public agency which succeeds to the interests of the City in and to the Revenues and which (by operation of law, by contract or otherwise) becomes legally bound to all of the terms and provisions hereof.

SECTION 4.10. *Amendment of this Loan Agreement.* This Loan Agreement may be amended pursuant to a written amendment by and between the City and the Lender.

SECTION 4.11. *Tax Covenants (Related to Series A Loan).*

(a) Generally. The City shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Loan Repayments attributable to the Series A Loan to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The City shall assure that the proceeds of the Series A Loan are not so used as to cause the Series A Loan to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Loan Repayments attributable to the Series A Loan to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City may not take, or permit or suffer to be taken, any action with respect to the proceeds of the Loan Repayments attributable to the Series A Loan which, if such action had been reasonably expected to have been taken, or had been

deliberately and intentionally taken, on the Closing Date would have caused the Loan Repayments attributable to the Series A Loan to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Small Issuer Exemption from Bank Non-deductibility Restriction. The City hereby designates the Series A Loan for purposes of paragraph (3) of Section 265(b) of the Tax Code and represents that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Tax Code) from gross income for federal income tax purposes (excluding (i) private activity bonds, as defined in Section 141 of the Tax Code, except qualified 501(c)(3) bonds as defined in Section 145 of the Tax Code and (ii) current refunding obligations to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation), including the Series A Loan, has been or will be issued by the City, including all subordinate entities of the City, during the calendar year 2024.

(f) Arbitrage Rebate. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series A Loan.

(g) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in the following sentence, the City covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Loan Agreement with respect to the Series A Loan, or otherwise containing gross proceeds of the Series A Loan (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Loan Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of section 148 of the Tax Code).

For purposes of this subsection (g), the term “Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

## **ARTICLE V EVENTS OF DEFAULT AND REMEDIES**

SECTION 5.1. *Events of Default Defined.* The following are Events of Default under this Loan Agreement:

- (a) Failure by the City to pay any Loan Repayment or other payment required hereunder when due.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (d) Any event of default with respect to any Parity Debt, if any.
- (e) Any statement, representation or warranty of a material nature made by the City in or pursuant to this Loan Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.
- (f) Any court of competent jurisdiction shall issue a final, nonappealable judgment that this Loan Agreement is not valid or binding against the City.
- (g) Any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$1,000,000 are entered or filed against the City and remain unpaid, unvacated, unbonded and unstayed for a period of 60 days.

SECTION 5.2. *Remedies on Default.* Upon the occurrence and during the continuation of an Event of Default, the Lender may, at its option and without any further demand or notice:

- (a) declare all principal components of the unpaid Loan Repayments, together with accrued interest thereon, to be immediately due and payable, whereupon the same will immediately become due and payable; and

- (b) take whatever action at law or in equity may appear necessary or desirable to collect the Loan Repayments then due or thereafter to become due during the Term of this Loan Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Loan Agreement, including, but not limited to, enforcing its right to and under the pledge of the Revenues hereunder.

The provisions of the preceding clause (a) are subject to the condition that if, at any time after the principal components of the unpaid Loan Repayments have been so declared due and payable under the preceding clause (a), and before any judgment or decree for the payment of the moneys due have been obtained or entered, the City deposits with the Lender a sum sufficient to pay all principal components of the Loan Repayments coming due prior to such declaration and all matured interest components (if any) of the Loan Repayments, with interest on such overdue principal and interest components calculated at the rate set forth in the applicable provisions of Section 3.4, and a sum sufficient to pay all reasonable costs and expenses incurred by the Lender in the exercise of its rights and remedies hereunder, and any and all other defaults known to the Lender (other than in the payment of the principal and interest components of the Loan Repayments due and payable solely by reason of such declaration) have been made good, then, and in every such case, the Lender shall, by written notice to the City, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 5.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Lender is exclusive, and every such remedy is cumulative and in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article V it is not necessary to give any notice, other than such notice as may be required in this Article V or by law.

SECTION 5.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Loan Agreement defaults under any of the provisions hereof and the nondefaulting party employs attorneys (including in-house counsel) or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including those of in-house counsel) and such other expenses so incurred by the nondefaulting party.

SECTION 5.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Loan Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE VI  
SECURITY DEPOSIT;  
DISCHARGE OF CITY'S OBLIGATIONS**

SECTION 6.1. *Security Deposit; Discharge of City's Obligations.* Notwithstanding any other provision of this Loan Agreement, the City may (but is not required to) on any date secure the payment of Loan Repayments in whole or in part, by irrevocably depositing with a trustee, escrow agent or other fiduciary an amount of cash which, together with other available amounts, is invested in whole or in part in Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Loan Repayments when due, as the City instructs at the time of the deposit.

In the event of a security deposit under this Section 6.1 for the payment in full of all remaining Loan Repayments, (i) the City hereby grants a first priority security interest in and lien on the security deposit and all proceeds thereof in favor of the Lender, and (ii) the pledge of Revenues and all other security provided by this Loan Agreement for said obligations will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all of Loan Repayments from such security deposit.

**ARTICLE VII  
MISCELLANEOUS**

SECTION 7.1. *Notices; Address for Loan Repayments.* Any notice, request, complaint, demand or other communication under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by electronic means as acceptable by each party, at its number set forth below. Notice shall be effective (a) upon transmission by electronic means as acceptable by each party, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Lender or the City may, by written notice to the other, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City:* City of Alameda  
2263 Santa Clara Avenue  
Alameda, CA 94501  
Attention: Director of Finance

*If to the Lender:* JPMorgan Chase Bank, N.A.  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Loan Repayments shall be made to the following address, or such other address as notified to the City by the Lender in an invoice or other written document:

Chase  
[P.O. Box 78039]

[Phoenix, AZ 85062-8039]

SECTION 7.2. *Binding Effect.* This Loan Agreement inures to the benefit of and is binding upon the Lender and the City and their respective successors and assigns.

SECTION 7.3. *Severability.* If any provision of this Loan Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 7.4. *Further Assurances and Corrective Instruments.* The Lender and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

SECTION 7.5. *Execution in Counterparts.* This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.6. *Applicable Law.* This Loan Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7.7. *Captions.* The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Loan Agreement.

SECTION 7.8. *Waiver of Sovereign Immunity.* To the extent permitted by law, the City hereby expressly waives, and agrees not to claim, any sovereign immunity in any suits or judicial proceedings related to or arising out of this Loan Agreement.

SECTION 7.9. Waiver of Jury Trial.

(a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE DISTRICT AND THE LENDER IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LOAN AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE DISTRICT FURTHER AGREES THAT, IN THE EVENT OF LITIGATION, IT WILL NOT PERSONALLY OR THROUGH ITS AGENTS OR ATTORNEYS SEEK TO REPUDIATE THE VALIDITY OF THIS SECTION 7.9, AND IT ACKNOWLEDGES THAT IT FREELY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT TO WAIVE TRIAL BY JURY IN ORDER TO INDUCE THE LENDER TO ENTER INTO THIS LOAN AGREEMENT.

(b) To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the parties agree to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Loan Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such

judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The parties shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters; provided that the event the parties cannot agree upon a referee, the referee will be appointed by the court. The fees and expense of any referee appointed in such action or proceeding shall be borne by the party who does not prevail, as determined by the referee.

[Signature Page Follows]

IN WITNESS WHEREOF, the Lender has caused this Loan Agreement to be executed in its name by its duly authorized officer, and the City has caused this Loan Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

**JPMORGAN CHASE BANK, N.A.,**  
*as lender*

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY OF ALAMEDA,**  
*as borrower*

By: \_\_\_\_\_  
Jennifer Ott  
City Manager



APPENDIX A

SCHEDULE OF LOAN REPAYMENTS\*

[To be finalized for Closing]

<u>Loan Repayment Date</u>	<u>Series A Principal</u>	<u>Series A Interest</u>	<u>Series B Principal</u>	<u>Series B Interest</u>	<u>Total Loan Repayment</u>
12/1/2024					
6/1/2025					
12/1/2025					
6/1/2026					
12/1/2026					
6/1/2027					
12/1/2027					
6/1/2028					
12/1/2028					
6/1/2029					
12/1/2029					
6/1/2030					
12/1/2030					
6/1/2031					
12/1/2031					
6/1/2032					
12/1/2032					
6/1/2033					
12/1/2033					
<hr/>					
<b>Totals</b>					

\* Interest amount assumes no Event of Default has occurred and is continuing under the Loan Agreement, and no Event of Taxability has occurred with respect to the Series A Loan.

**APPENDIX B**

**LIST OF ALAMEDA POINT LEASES**

**[To be inserted for Closing]**