

## SECOND AMENDMENT TO INFRASTRUCTURE AGREEMENT

This SECOND AMENDMENT TO INFRASTRUCTURE AGREEMENT ("Second Amendment") is entered into as of \_\_\_\_\_, 2022 by and between the CITY OF ALAMEDA, a municipal corporation ("City") and the HARBOR BAY BUSINESS PARK ASSOCIATION, a California mutual benefit non-profit corporation ("HBBPA").

### RECITALS

A. City, HARBOR BAY ISLE ASSOCIATES, a California general partnership ("HBIA"), HARBOR BAY VILLAGE FOUR ASSOCIATES, a California limited partnership ("HBVFOUR"), and HARBOR BAY VILLAGE FIVE ASSOCIATES, a California limited partnership ("HBVFIVE"), entered into that certain Infrastructure Agreement dated April 4, 1989, pursuant to which the parties, among other things: (i) identified issues involving traffic and access to Bay Farm Island and Harbor Bay Isle, as well as "Traffic Improvement Projects" to mitigate such issues, and (ii) established a "Traffic Improvement Fund" to hold the "Traffic Improvement Taxes" collected. Terms not otherwise defined in this Second Amendment shall have the meaning given to them in the Infrastructure Agreement.

B. In a First Amendment to Infrastructure Agreement entered into as of October 1, 2019, HBIA assigned to HBBPA all of its rights and obligations under the Infrastructure Agreement, and HBBPA accepted and assumed such rights and obligations under the Infrastructure Agreement.

C. In the First Amendment to Infrastructure Agreement, the parties updated the schedule of Traffic Improvement Projects eligible to be funded from the Traffic Improvement Fund, which schedule was set out as Exhibit A attached to the First Amendment to Infrastructure Agreement.

D. The parties desire to update the list of Traffic Improvement Projects eligible for funding with Traffic Improvement Funds, as further described herein.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and HBBPA agree as follows:

1. **Traffic Improvements Projects Eligible for Traffic Improvement Fund.** The original schedule of Traffic Improvement Projects eligible to be funded with Traffic Improvement Funds, as set out on Exhibit A of the Infrastructure Agreement, was deleted in its entirety and replaced with the list of Traffic Improvement Projects set out on Exhibit A attached to the First Amendment to Infrastructure Agreement. The parties desire in this Second Amendment to Infrastructure Agreement to further update the schedule of Traffic Improvement Projects eligible to be funded with Traffic Improvement Funds. Accordingly, Exhibit A attached to the First Amendment is hereby deleted in its entirety and replaced with the schedule of Traffic Improvement Projects attached as Exhibit A to this Second Amendment.

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2. **Delivery of Notices.** Any notice, report, or other communication delivered by a party to another pursuant to this Second Amendment to Infrastructure Agreement shall be deemed delivered when (a) personally served, (b) two (2) business days after such notice is deposited in the United States Mail with postage fully prepaid, or (c) the day following delivery to a nationally recognized overnight courier service, such as FedEx at the addresses set forth below or at such other addresses as the a party may from time to time provide by written notice given pursuant hereto:

To City: The City of Alameda, City Hall, 2263 Santa Clara Avenue, Room 280, Alameda, CA 94501, Attn: City Attorney.

With an Additional Copy to: The City of Alameda, City Hall West, 950 W. Midway Ave., Alameda, CA 94501, Attn: Director of Public Works.

To HBBPA: Harbor Bay Business Park Association, c/o GS Management Company, 5674 Sonoma Drive, Pleasanton, CA 94566; With a copy to Joseph Ernst, srmErnst Development Partners, 2220 Livingston Street, Suite 208, Oakland, CA 94606.

3. **Confirmation of Binding Effect of Remaining Sections of Infrastructure Agreement.** Except for changes described in this Second Amendment to Infrastructure Agreement, all the other terms and conditions of the Infrastructure Agreement as previously amended shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment to Infrastructure Agreement is executed by persons authorized to represent the respective party:

CITY OF ALAMEDA, a municipal corporation

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

Nancy Bronstein, Interim City Manager

APPROVED AS TO FORM:

City Attorney

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

Len Aslanian, Assistant City Attorney

HARBOR BAY BUSINESS PARK ASSOCIATION, a California mutual benefit non-profit corporation

Joseph Ernst, President

## **EXHIBIT A**

### **UPDATED SCHEDULE OF TRAFFIC IMPROVEMENT PROJECTS – 2022**

Group 1 – 50 % of City costs from Traffic Improvement Fund: None.

Group 2 – 100% of City costs from Traffic Improvement Fund:

1. Signalization or other intersection control as determined to be needed on Bay Farm Island by the City Engineer;
2. Transportation systems management programs for Bay Farm Island, including, without limitation payment of up to \$500,000 to the San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) pursuant to Section 11.2 (a)(i) of that certain Ferry Service Operations Transfer Agreement, dated February 25, 2011, between the City of Alameda, Alameda Reuse and Redevelopment Authority and WETA with respect to WETA’s operation of the Harbor Bay Ferry Terminal at Bay Farm Island.
3. Maintenance and repair of landside improvements at Harbor Bay Ferry Terminal.
4. Repairs of existing shuttle bus shelters and installation of new shuttle bus shelters.
5. Expansion of shuttle bus service connecting businesses in the Harbor Bay Business Park to and from the Harbor Bay Ferry Terminal, to the Harbor Bay Landing Center, to the South Shore Shopping Center and to any Park and Ride lots provided in the vicinity.
6. Installation of signage, wayfinding or place making, in public areas that may address all modes of travel.