

A G R E E M E N T

THIS AGREEMENT entered into by and between the CITY OF ALAMEDA, a Municipal corporation, (hereinafter called "City"), and the ALAMEDA WEST LAGOON HOME OWNERS' ASSOCIATION, (hereinafter called the "Association");

W I T N E S S E T H:

WHEREAS, the parties hereto desire to enter into an Agreement to set forth their rights and responsibilities in connection with the proper maintenance of the South Shore Lagoon System (described in Exhibit "A" attached hereto) for storm drainage and private recreational and aesthetical purposes;

WHEREAS, it is contemplated that the Association will obtain title to the entire South Shore Lagoon System and all the equipment and machinery necessary for the operation of said Lagoon System, subject to the easements hereinbelow referred to (said equipment and machinery is particularly described in Exhibit "B" attached hereto and made a part hereof); and

WHEREAS, the record title owners of said Lagoon System and said machinery and equipment will grant to the City perpetual easements over all of said Lagoon System and machinery and equipment for the purpose of allowing the City to enter upon and maintain said Lagoon System and said machine and equipment; and

WHEREAS, the parties hereto desire to establish an equitable division of the costs of maintaining said Lagoon System and machinery and equipment in good condition for storm drainage and private recreational and aesthetical purposes.

N o w, t h e r e f o r e, it is mutually agreed between the parties hereto, as follows:

1. The City shall inspect the Lagoon System and all machinery and equipment incident thereto and address a letter to the record title owners of said Lagoon System and machinery and equipment, listing therein any repairs and replacements that should be performed, prior to the time title to the Lagoon System and the machinery and equipment passes to the Association;

2. The City shall perform all work, labor, repairs, replacement, maintenance and engineering services that are necessary to keep said Lagoon System and all machinery and equipment incident thereto in good condition and working order for purposes of storm drainage, private recreation and aesthetics.

3. The parties hereto agree that the costs for maintaining said Lagoon System and said machinery and equipment in good condition for storm drainage and private recreational and aesthetical purposes shall be divided between the parties hereto as follows:

(a) All costs relating to the maintenance, repair and replacement of the items hereinafter

listed shall be paid solely by the Association;

1. 24" pipe outboard of Shore Line Drive
2. Supply pump and motor
3. Pump structure
4. 21" Supply line
5. Weir gates (Willow Street)
6. Weir structure (Willow Street)

(b) All costs relating to the maintenance, repair and replacement of the items hereinafter listed shall be paid solely by the City;

1. Grand Street Bridge
2. All 5' diameter culvert pipes
3. Outfall Weir gates
4. Outfall Weir structure
5. 10'x6' R.C. Box Culvert
6. Outfall channel

(c) All costs incurred for the maintenance of said Lagoon System and said machinery and equipment that do not relate specifically to items hereinabove listed in subparagraphs (a) and (b) of paragraph 3 of this Agreement shall be paid one half (1/2) thereof by the City and one half (1/2) thereof by the Association. In this regard it is agreed that the items hereinafter listed shall be paid one half (1/2) thereof by the City and one half (1/2) thereof by the Association:

1. Energy for pumping

2. Labor and materials

3. City's administrative cost relating to assessment procedures

4. The Association shall procure and maintain at all times at its sole expense public liability and property damage insurance coverage for said Lagoon System and said equipment and machinery as follows:

A policy of Public Liability Insurance, in which the City of Alameda, the City Council, the City Manager, and the City Engineer shall be named as additional insureds, insuring, indemnifying, and saving harmless and agreeing to defend said additional insureds against all suits, claims or actions of any person or persons for or on account of any injuries or damages to persons or property sustained or arising in the work herein mentioned, or in consequence thereof, and to pay all judgments, costs, and expenses of litigation in connection therewith. Said Public Liability Insurance shall provide for a limit of not less than \$200,000 for all damages arising out of bodily injuries to or for the death of one person, and \$500,000 for all damages arising out of bodily injuries to or for the death of two or more persons in any one accident, and a limit of not less than \$50,000 for all damages arising out of injury to or destruction of property in any one accident, and \$100,000 for all damages arising out of injury to or destruction of property during the policy period.

All of the aforementioned policies shall carry an endorsement providing for ten (10) days' notice of cancellation thereof to the City.

The policies aforementioned shall be issued by an insurance carrier to said City and satisfactory evidence of the issuance of such policy shall be delivered to the City thirty (30) days prior to the conveyance of title to said Lagoon System to the Association.

5. The City shall estimate the Association's share of all maintenance costs, including reserves for replacement and City's administrative cost relating to assessment procedures in advance on a yearly basis and shall inform the Association in writing of the Association's share of said estimated costs. Said advance estimated costs shall be delivered to the Association in writing on or before August 31st of each and every year. The Association shall then estimate the additional reasonable yearly overhead costs of the Association. The Association shall then determine a pro-rata assessment of said total costs on each of its members and send in writing to the City a list containing names and addresses of each member of the Association and each member's pro-rata assessment and the total amount of the Association's estimated reasonable yearly overhead costs. The City shall then prepare a statement in duplicate of such pro-rata assessment and mail one copy thereof to each member of the Association. Said assessment shall be payable to the City Treasurer. Said Assessment shall be mailed by the City to each member of the Association prior to January 1st. The date said assessment shall be due and payable shall be January 1st. The date of delinquency of said assessment shall be January 31st. On the date of

delinquency of said assessments, the City shall inform the Association in writing of the names and addresses of the members of said Association whose assessments are delinquent. The Association shall then institute such enforcement and collection procedures as shall be necessary against the members whose assessments are delinquent. Such enforcement and collection procedures shall be at the Association's sole cost and expense.

6. On or before August 31st of each year, the City shall submit in writing to the Association a list of all expenditures incurred by the City in connection with this Agreement for the previous calendar year.

7. All assessments received by the City as hereinabove provided shall be distributed by the City as follows:

(a) Seventy five percent (75%) of all assessments received by the City shall be retained by the City until the City has received that amount of money equal to the City's estimate of the Association's share of yearly maintenance and City's administrative costs less reserves for replacement. The City may disburse said funds for such maintenance and City's administrative costs as the City shall deem necessary.

(b) Twenty five percent (25%) of all assessments received by the City shall be distributed to the Association until said disbursements equal the estimate of reasonable yearly overhead expenses of the Association.

(c) All assessments received by the City after the total amount of the Association's share of estimated yearly maintenance and City's administrative costs less reserve for depreciation and the estimated overhead expense of the Association shall be deposited by the City in a trustee account in a savings and loan association designated by the Association and approved by the City. Said funds shall be held as a reserve for replacement. All withdrawals from said trustee account shall be made solely by the City upon its determination that such replacement is necessary.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement this 25th day of November, 1964

CITY OF ALAMEDA

By

William J. C. Lee  
Mayor

ATTEST:

Shirley R. Fennice  
City Clerk  
ALAMEDA WEST LAGOON HOME OWNERS' ASSOCIATION

By

D. J. Hawley  
D. J. Hawley, President

G. W. Kotschedoff  
G. W. Kotschedoff, Secretary-Treasurer