

AMENDMENT TO CONTRACT

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"),

WITNESSETH:

City and Association agree that subparagraph (c) of Paragraph 7 of the contract heretofore on November 25, 1964, entered into between them be amended to read as follows:

"7.

"(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 either a state or federal chartered commercial bank or a savings and loan association, or in both such institutions, as shall be 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."

Except as so modified said contract is hereby ratified and affirmed, and it shall remain in full force and effect according to its original terms.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement this 7th day of February, 1968.

CITY OF ALAMEDA,
a municipal corporation,

By William M. McCall Mayor

Attest Shirley H. Jenner City Clerk

Approved as to form:

J. Thompson
City Attorney

ALAMEDA WEST LAGOON HOME OWNERS'
ASSOCIATION, a California corporation,

By Charles W. Ladd President

By Reginald J. Wasmuth Secretary-Treasurer

Authorization:

Council Resolution No. 7274,
adopted February 5, 1968.



City of Alameda • California

September 30, 1996

Mr. A. Derr
President
Alameda West Lagoon Homeowners'
Association
P.O. Box 1044
Alameda, CA 94501

Dear Mr. Derr:

Re: Amendment to Agreement
South Shore Lagoon System

Herewith enclosed for your files is the fully-executed Amendment to the Agreement between the City of Alameda and the Association approved by the City Council on September 3, 1996. Paragraphs 5 and 7 of the Agreement were modified, and Paragraph 6 was deleted. The Amendment has been placed on file with the Original Agreement, dated November 25, 1964 and the former Amendment dated February 7, 1968.

If you have any questions, please contact me at 748-4506. Thank you.

Very truly yours,

A handwritten signature in cursive script, reading "Diane B. Felsch".

Diane B. Felsch, CMC
City Clerk

Enclosure - 1

Office of the City Clerk

East Wing, Historic Alameda High School
2250 Central Avenue, Room 340 • 94501

510 748 4506 • FAX 510 748 4503 • TDD 510 522 7530

ORIGINAL

AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this 4th day of September, 1996, by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter "City") and Alameda West Lagoon Home Owners' Association, a California corporation, whose address is P.O. Box 1044, Alameda, CA 94501, (hereinafter "Association"), is made with reference to the following:

RECITALS:

- A. On November 25, 1964, an agreement was entered into by and between City and the Association (hereinafter "Agreement").
- B. On February 7, 1968, the Agreement was modified.
- C. City and the Association desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. Paragraph 5 of the Agreement is modified to read as follows:

(a) The City shall estimate the Association's share of all maintenance costs and City administrative costs 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.

(b) The Association shall then estimate the additional reasonable annual operating and reserve funds needed and shall then determine a pro-rata assessment of said total costs on each of its members. The Association shall then prepare a statement of such pro-rata assessment and mail one copy thereof to each member of the Association. Said assessment shall be payable to the Association. Said assessment shall be mailed by the Association to each member of the Association prior to January 1st of each year. The date said assessment shall be due and payable shall be February 1st. The date of delinquency of said assessment shall be March 1. The Association shall 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.

(c) The City shall bill the Association annually on a pro-rata basis for all costs incurred incident to the lagoon system during the previous year. Costs shall include the Association's share, if any, of contracts with third party providers of services or supplies. Said bill shall be due and payable when received and will be considered delinquent thirty (30) days after issue. In the event of delinquency the City may institute legal proceedings and shall be

entitled to recover interest at the prevailing rate and costs including attorney's fees and staff time.

2. Paragraph 6 of the Agreement is deleted in its entirety.

3. Paragraph 7 of the Agreement is modified to read as follows:

(a) The Association and the City agree that fifty thousand dollars (\$50,000) is a reasonable amount to be established as a reserve for the operation and maintenance of the lagoon system. Said funds shall be deposited by the Association in a Certificate of Deposit in both the City's and the Association's name and shall be established so that either party, with 72 hours prior written notification to the other party, may withdraw the principal funds to meet the obligations for maintaining and operating the lagoon system. Interest on this account shall accrue to the Association, which may withdraw such interest at their discretion.

(b) All other funds held as of the date of this Agreement by the City for the Association shall be turned over to the Association within thirty (30) days of the date of this Agreement.

4. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

ALAMEDA WEST LAGOON HOMEOWNER'S
ASSOCIATION

By *[Signature]*
Title President

CITY OF ALAMEDA
A Municipal Corporation

By *[Signature]*

RECOMMENDED FOR APPROVAL:

[Signature]
Title Public Works Director

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST:

[Signature]
City Clerk