

## DEPOSIT/REIMBURSEMENT AGREEMENT

**Proposed  
City of Alameda  
Community Facilities District No. 20-1  
(Alameda Marina)**

**THIS DEPOSIT/REIMBURSEMENT AGREEMENT** (the "Agreement") is by and between the City of Alameda, California (the "City") for itself and on behalf of the proposed City of Alameda Community Facilities District No. 20-1 (Alameda Marina) (the "CFD"), and Alameda Marina, LLC, a California limited liability company (the "Developer").

### *R E C I T A L S :*

**WHEREAS**, the Developer has advised the City that it is proceeding with the development described in the Alameda Marina Master Plan approved by the City Council in July, 2018 which includes approximately 44 acres of property to be improved, in part, with residential, maritime, and commercial uses; and

**WHEREAS**, the Developer has requested that the City Council of the City, with the assistance of City Staff and the City's consultants, form the CFD under the provisions of the City's Special Tax Financing Improvement Code (the "Code") to include Alameda County Assessor's Parcel Nos. 71-257-3-1 and 71-288-1-2 (collectively, the "Property"), and that the City issue special tax bonds for the CFD (the "Bonds") in order to finance various public improvements necessitated by the development of the Property and otherwise authorized to be funded pursuant to the Code, as well as to fund various municipal services, all as to be more fully specified in the proceedings of the City Council of the City to form the CFD; and

**WHEREAS**, the Developer is willing to deposit funds with the City to ensure payment of the costs of the City in forming the CFD and otherwise in connection with the possible issuance of the Bonds, provided that such funds so advanced are reimbursed to the Developer from the proceeds of the Bonds issued by the City for the CFD to the extent provided herein; and

**WHEREAS**, the City and the Developer now desire to specify the terms of said deposit and reimbursement.

### *A G R E E M E N T :*

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. The Deposit: Additional Advances.** The Developer hereby agrees to provide to the City, in the form of a check made payable to the "City of Alameda, California" \$75,000.00 (the "Deposit"), to be used by the City to pay the costs in conducting proceedings for the formation of the CFD and the possible issuance of the Bonds (as more fully described in Section 2(a) below, the "Initial Costs"), said check to be delivered by the Developer to the City Manager. The City, by

its execution hereof, acknowledges receipt by the City of the Deposit. The check representing the Deposit will be cashed by the City, and the Deposit may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the Deposit.

The Developer hereby agrees to advance any additional amounts necessary to pay any Initial Costs incurred by the City, in excess of the amount of the Deposit, promptly upon written demand therefore by the City Manager stating that the then unspent and uncommitted balance of the Deposit is less than \$10,000; provided that the amount of the Deposit, plus any such additional amounts (the "Additional Deposits" and, collectively with the Deposit, the "Deposits"), shall not exceed \$150,000 without the prior written consent of the Developer. In the event that the Developer shall fail to remit the full amount of any such demand for additional amounts to the City Manager within ten (10) days of such a written demand, the City Manager may, in his sole and absolute discretion, direct City staff and consultants to cease all work related to the formation of CFD and any possible issuance of the Bonds until the full amount of any additional amount so demanded has been received by the City.

**Section 2. Use of Funds.** The Deposits shall be administered as follows:

(a) The City may draw upon the Deposits from time to time to pay the Initial Costs, including but not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the CFD, the issuance of the Bonds and the proposed expenditure of the proceeds of the Bonds to finance public improvements (such as legal counsel, including the City Attorney and Bond Counsel, and municipal advisor and special tax consultant); (ii) the costs of any market absorption study, an appraisal and other reports necessary or deemed advisable by City staff or consultants in connection with the Bonds; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the formation of the CFD, the rate and method of apportionment of the special taxes to be levied therein and any bonded indebtedness thereof; (iv) a reasonable charge for City staff time, as determined by the City Manager in his sole discretion, in analyzing and participating in the formation of the CFD, the issuance of the Bonds and the expenditure of the proceeds thereof, including a reasonable allocation of City overhead expense related thereto; and (v) any and all other actual costs and expenses incurred by the City with respect to the formation of the CFD or the issuance of the Bonds.

(b) If the CFD is successfully formed and the Bonds are issued under the Code by the City secured by special taxes levied upon the Property, the City shall provide for reimbursement to the Developer, without interest, of all amounts charged against the Deposits, said reimbursement to be made to the Developer solely from the proceeds of the Bonds and only to the extent otherwise permitted under the Code. On or within ten (10) business days after the date of issuance and delivery of the Bonds, the City shall return the then unexpended Deposits to the Developer, without interest, less an amount equal to any costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 2(a) above, but have not yet been so paid.

(c) If the CFD is not successfully formed and the Bonds are not issued, the City shall, within ten (10) business days after adoption of a resolution stating the intent of the City Council to terminate proceedings under the Code with respect to the formation of the CFD and/or the issuance of the Bonds, return the then unexpended Deposits to the Developer, without interest, less an amount equal to any costs incurred by the City or that the City is otherwise committed to

pay, which costs would be subject to payment under Section 2(a) above but have not yet been so paid.

**Section 3. Reimbursement of Other Developer Costs.** Nothing contained herein shall prohibit reimbursement of other costs and expenses of the Developer incurred in connection with the formation of the CFD and the issuance of the Bonds from the proceeds of the Bonds, including, but not limited to fees and expenses of its legal counsel. Any such reimbursement shall be made solely from the proceeds of the Bonds and only to the extent otherwise permitted under the Code and otherwise provided for, at the reasonable discretion of the City, in the proceedings for the issuance of the Bonds.

**Section 4. Agreement Not Debt or Liability of City.** It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City, as provided in Section 3-70.9b. of the Code. The City shall not in any event be liable hereunder other than to return the unexpended and uncommitted portions of the Deposits as provided in Section 2 above and provide an accounting under Section 7 below. The City shall not be obligated to advance any of its own funds with respect to the formation of the CFD, or the issuance of the Bonds or the expenditures of the proceeds thereof, or for any of the other purposes listed in Section 2(a) hereof. No member of the City Council, or officer, employee or agent of the City shall to any extent be personally liable hereunder.

**Section 5. No Obligation to Form the CFD or to Issue the Bonds.** The provisions of this Agreement shall in no way obligate the City to form the CFD, to issue the Bonds, or to expend any of its own funds in connection with the formation of the CFD or the issuance or expenditure of the proceeds of the Bonds. The Developer acknowledges that the formation of the CFD and the authority to issue the Bonds are subject to public hearings and a vote of the owner or owners of the Property.

**Section 6. Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**Section 7. Accounting.** The City shall provide the Developer with a written accounting of proceeds of the Deposits expended pursuant to this Agreement, within ten (10) business days of receipt by the City Manager of a written request therefore submitted by the Developer. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be charged to the Deposits.

**Section 8. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 9. Termination by Developer.** In the event that the Developer determines not to have the City proceed with the formation of the CFD or the issuance of the Bonds, the Developer shall send a written notice of termination to the City Manager and the City shall, within ten (10) business days of receipt by the City Manager of such written notice, provide a written accounting of proceeds of the Deposits theretofore expended and otherwise needed to pay costs incurred but not yet paid, and shall remit to the Developer any remaining Deposits not needed for such costs incurred but not yet paid.

**Section 10. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement as of the day and year written alongside their signature line below.

Executed on:  
\_\_\_\_\_, 2020

DEVELOPER:

ALAMEDA MARINA, LLC, a California limited liability company

By: \_\_\_\_\_  
Bill R. Poland,  
Manager

Executed on:  
\_\_\_\_\_, 2020

CITY:

CITY OF ALAMEDA, CALIFORNIA

By: \_\_\_\_\_  
Eric Levitt,  
City Manager

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[Signature page to Deposit/Reimbursement Agreement for Community Facilities District 20-1]