

FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT

THIS FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT (“First Amendment”) dated for reference purposes only as of _____, 2021, is entered into between and among the Successor Agency (“Successor Agency”) to the Community Improvement Commission of the City of Alameda (the “CIC”), the City of Alameda, a charter city and municipal corporation (the “City”), and Catellus Alameda Development, LLC, a Delaware Limited Liability Company (“Catellus”) (collectively, the “Parties”), with reference to the following:

RECITALS

- A. WHEREAS in July of 2017, the City Council approved an amendment to the Bayport/Alameda Landing Master Plan, which involved the final development phase including Alameda Landing north of Mitchell Avenue (“Alameda Landing”).
- B. WHEREAS, the Parties entered into a Reimbursement Agreement for Estuary Park Access, dated for reference purposes as of January 31, 2019 (“Agreement”), which Agreement, *inter alia*, describes the terms and conditions under which the City funds Catellus for creation and construction of service-road access to Estuary Park from Mitchell Avenue (“Service Road Work”) as part of the final development phase of Alameda Landing.
- C. WHEREAS, on March 28, 2018, the City Council approved eight-hundred thousand dollars and zero cents (\$800,000.00) for the Service Road Work as part of its Fiscal Year 2017-2018 Mid-Year Budget Update.
- D. WHEREAS the Parties agreed that, should the total Service Road Work costs and expenses incurred by Catellus exceed \$800,000.00 (“Excess Reimbursement Amount”), the City Council would approve necessary Excess Reimbursement Amount.
- E. WHEREAS, on April 26, 2021, Catellus notified the City that it estimated incurring additional costs and expenses for said Service Road Work, thus bringing the total to \$885,000.00, for an Excess Reimbursement Amount of \$85,000.00.
- F. WHEREAS the Parties desire for the terms of the Reimbursement Agreement to be amended upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Recitals. The Recitals as set forth above are hereby incorporated as though set forth fully herein.

2. Reimbursement Amount. The Parties hereby agree to increase the Estuary Park Service Road Work budget from \$800,000.00 to \$885,000.00; said increase shall be allocated from the City's FISC Lease Revenue Fund.

3. Miscellaneous.

3.1 Entire Agreement. This First Amendment sets forth the entire agreement between the Parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

3.2 Ratification. Except as herein modified or amended, the provisions, conditions, and terms of the Reimbursement Agreement shall remain unchanged and in full force and effect. In the event of any inconsistencies between the provisions of the Reimbursement Agreement and this First Amendment, the provisions of the First Amendment shall govern and control.

3.3 Defined Terms. The capitalized terms in this First Amendment shall have the same definitions as set forth in the Reimbursement Agreement unless this First Amendment defines them otherwise.

3.4 Authority. Catellus operates as a Delaware Limited Liability Company entity; as such, Catellus, and each person executing this First Amendment on behalf of it, hereby individually and collectively covenants and warrants that (a) Catellus is established or formed and validly existing under the laws of the state of Delaware; (b) Catallus has and is duly qualified to do business in California; (c) Catellus has power and authority to enter into this First Amendment and to perform all of its obligations hereunder; and (d) each person who signs this First Amendment on behalf of Catellus is duly and validly authorized to do so. Upon execution hereof, and at Catellus' request, Catellus shall provide CIC and the City with written evidence substantiating the authority of the person(s) executing this First Amendment on behalf of Catellus to bind same accordingly.

3.5 Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This First Amendment may be transmitted in "PDF" format; and the Parties can rely upon the PDF as a counterpart of this signed First Amendment to the same extent as if the Parties received an original counterpart.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first written above.

LICENSEE:

CATELLUS, LLC, a Delaware limited liability company

By: _____

Name:

Title:

Date: _____

LICENSOR:

CITY OF ALAMEDA, a charter city and municipal corporation

By: _____

Eric J. Levitt

City Manager

Date: _____

Approved as to form:

By: _____

Elizabeth Mackenzie

Chief Assistant City Attorney

Recommended for approval:

By: _____

Lisa Maxwell

Community Development Director