

**REIMBURSEMENT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
COMMUNITY FACILITIES DISTRICT NO. 8
TO REPAY COSTS OF DISTRICT CHANGE PROCEEDINGS**

This Agreement (“Agreement”) is made and entered into this _____ day of _____ 2019, by and between the City of San José, a municipal corporation of the State of California (“City”), and Community Facilities District No. 8 (Communications Hill), a legally constituted California community facilities district (“District”).

RECITALS

WHEREAS, On September 10, 2019, the City Council adopted Resolution No. _____ (“Alteration 1A”) and Resolution No. _____ (“Alteration 1B”) which commenced proceedings to change the facilities and services financed by the District (“Change Proceedings”) pursuant to Chapter 14.27 of Title 14 of the City’s Municipal Code, which incorporates and modifies by reference the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code (together, the “Act”); and

WHEREAS, the City will incur costs to conduct the Change Proceedings (“Change Costs”); and

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of a community facilities district, the City may accept advances of funds from any source, may provide for the use of those funds for any authorized purpose and may agree to reimburse the advances from District funds under all of the following conditions: (1) the proposal to repay the advances is included in the resolution of consideration to modify the District; (2) any proposed change is approved by the qualified electors of the District and, (3) if the qualified electors of the District do not approve the proposed change, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election; and

WHEREAS, the City has agreed to advance funds in the amount of \$30,000 to apply to the Change Costs, subject to an agreement to reimburse the City for its advance; and

WHEREAS, the City and the District desire to enter into this Agreement to specify the terms of the City’s advance of funds and the District’s reimbursement;

NOW, THEREFORE, in consideration of their mutual promises and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows:

Section 1. City's Advance. The City agrees to provide \$30,000.00 in direct payments and/or the value of in-kind services ("Advance") to be used to cover the Change Costs. The Change Costs include:

- A. City staff time and expenses in conducting the Change Proceedings;
- B. Fees and expenses of any consultants employed by the City in connection with the Change Proceedings (such as engineering, legal counsel, financial advisory and special tax consultant);
- C. Costs of studies or reports necessary or deemed advisable by City staff in conducting the Change Proceedings;
- D. Costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the Change Proceedings; and
- E. Any and all other actual costs and expenses incurred by the City or the value of work in-kind provided by the City in connection with the Change Proceedings.

Section 2. No Obligation for Further Advances. The Advance shall be the maximum amount that the City is obligated to provide for the Change Costs. If the Change Costs exceed the Advance, the City shall be under no obligation to proceed with the Change Proceedings until additional funds are deposited with the City to pay for such additional costs.

Section 3. Reimbursement of Advance. The Advances are subject to reimbursement as follows:

- A. If two-thirds or more of the qualified electors casting votes approve either or both of Alteration 1A or Alteration 1B, the District shall, within ten (10) business days after the certification of the results of the special election, reimburse the City, without interest, for the Change Costs up to the total of the Advance. Any unexpended, unencumbered portion of the Advance shall be returned to the City.
- B. If the City Council determines not to submit Alteration 1A or Alteration 1B to the qualified electors in the District, or if two-thirds or more of the qualified electors casting votes do not approve either Alteration 1A or Alteration 1B in an election called by the City, the District shall

not be obligated to repay any amounts of the Advance and the City shall be entitled to the return of any unexpended portion of the Advance, without interest, less an amount equal to any Change Costs which had been committed but not yet paid by the time of the election.

Section 4. Agreement Not Debt or Liability of City. This Agreement is not a debt or liability of the City, as provided in Section 53314.9(b) of the Act. No councilmember, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. Relationship to Other Fees and Charges. Neither the Change Costs nor the Advance shall apply to any fees or charges set by the City other than those in connection with conducting the Change Proceedings.

Section 6. No Commitment by City. This Agreement in no way obligates the City to approve any project proposed by Alteration 1A or Alteration 1B or to submit the proposed changes to the qualified electors of the District.

Section 7. Accounting. The Advance may be commingled with other City funds for purposes of investment and safekeeping, but the City shall maintain a record of the expenditures made from the Advance and any other Change Costs.

Section 8. Notices. All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the addresses set forth below, or to any other address provided by one party to the other in writing.

To City: City of San José
Department of Public Works
Development Services Division
Attn: Thomas M. Borden
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

To District: City of San José
Department of Public Works
Development Services Division
Attn: Thomas M. Borden
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

The effective date of such written notice shall be the date of personal delivery or the date of receipt by certified mail or three calendar days after mailing in the United States Mail.

Section 9. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, arrangements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement, which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

Section 10. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The venue for any suit brought pursuant to this Agreement shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Section 11. No Third-Party Beneficiaries. This Agreement shall not be deemed to be an Agreement for the benefit of any third party; and no third party shall have any right or action hereunder for any cause whatsoever.

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APPROVED AS TO FORM:

EGAN HILL
Senior Deputy City Attorney

“City”

CITY OF SAN JOSE, a municipal corporation

By _____
TONI J. TABER, CMC
City Clerk

“District”

COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL), a legally constituted community facilities district

By _____
TONI J. TABER, CMC
City Clerk