

Attachment E - Final Pending Signatures

DEPOSIT AND REIMBURSEMENT AGREEMENT

**City of Oakland
Community Facilities District No. [CFD#]
(Oak Knoll Facilities and Services)**

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the “Agreement”), dated for convenience as of _____, 2021, is by and between the City of Oakland (the “City”), and Oak Knoll Venture Acquisition, LLC, a Delaware limited liability company (the “Landowner”) in connection with the Landowner’s request to the City to consider the formation of a community facilities district for the proposed Oak Knoll development project (the “CFD”).

RECITALS:

WHEREAS, the Landowner would like the City to consider taking actions necessary to form the CFD under the Mello-Roos Community Facilities Act of 1982, as amended (commencing with Section 53311 of the California Government Code) (the “Act”);

WHEREAS, the Landowner is willing to advance funds to the City or to its agents and consultants as necessary to ensure payment of any and all costs of the City in considering and forming the CFD and, if formed, certain non-contingent costs in connection with the potential issuance of bonds for the CFD:

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of the CFD, the City may accept advances of funds and may provide, by resolution, for the use of those funds, including but not limited to pay any cost incurred by the local agency in creating the CFD, and may agree to reimburse the advances under all of the following conditions: (1) the proposal to repay the advances is included both in the resolution of intention and the resolution of formation to establish the CFD; and (2) any proposed special tax is approved by the qualified electors of the CFD and, if the qualified electors of the CFD do not approve the proposed special tax, 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 and the Landowner now desire to specify the terms of the advances of funds and the reimbursement of such advances.

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

AGREEMENT:

Section 1. The Advances. The Landowner hereby agrees to provide \$107,790 in the form of a check payable to the City (the “Initial Advance”), to be used by the City to pay for currently-anticipated “Initial Costs” (as defined below), as detailed in Exhibit A. The Initial Advance shall be delivered to the Department Head designated by the City Administrator prior to the

execution of this Agreement by the City (the “Deposit Manager”). The City, by its execution hereof, acknowledges receipt of \$107,790. The check representing the Initial Advance will be cashed by the City, and the Initial Advance 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 Initial Advance.

Section 2. Additional Advances. The Landowner further agrees to advance, within ten business days of its receipt of a written demand therefore from the Deposit Manager, any additional amounts (collectively with the Initial Advance, the “Advances”) identified by the Deposit Manager as incurred or reasonably expected to be incurred by the City for Initial Costs, said Advances to be made to the City or directly to the City’s consultants as specified by the Deposit Manager in writing to the Landowner. In the event that the Landowner shall fail or refuse to remit any such amounts to or at the direction of the Deposit Manager, all processing by the City of the proceedings for the CFD shall cease until such time as the requested amounts are paid by the Landowner; provided, however, that in such event, the City may, in its sole discretion, elect to have work that is then-underway completed to a reasonable point and to pay for such work from remaining funds on deposit with the City.

The Initial Costs include, but are not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the CFD (such as engineering, legal, counsel, including special counsel to the City, financial advisory, special tax consultant and planning consultant); (ii) the costs of appraisals, pricing, absorption or other market demand studies and other reports necessary or deemed advisable by City staff in forming the CFD and issuing bonds for the CFD; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the CFD, any special tax to be levied therein or any bonded indebtedness thereof; (iv) the costs of any action prosecuted in the superior court to validate the formation of the CFD, said special tax and/or any bonded indebtedness; and (v) any and all other actual costs and expenses incurred by the City with respect to the evaluation and creation of the CFD and any proposed or actual issuance of bonds, including any CFD-related costs incurred prior to the execution of this Agreement. The decisions to retain, the selection of and directions to any such consultants/counsel and any underwriting firms, shall be made by and at the sole discretion of the City. The City has not included in the definition of Initial Costs a reasonable charge, as determined by the Deposit Manager, in their sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the CFD formation, special tax formulation, facilities acquisition and bond issuance proceedings (“City Initial Costs”), but expects to be reimbursed for such City Initial Costs as set forth in Section 2.

All appraisals, market studies, special tax pro formas and other documentation prepared in connection with the evaluation and/or formation of the CFD, if applicable, shall become property of the City, regardless of whether the CFD is formed.

Section 3. Use of Funds. Pursuant to Section 53314.9 of the Act, the Advances are subject to reimbursement only as follows:

(a) If the CFD is formed and bonds are issued under the Act by the City secured by special taxes levied upon the land within the CFD, the City may provide for reimbursement to the Landowner, without interest, of all or a portion of the Advances, said reimbursement to be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Act. The CFD will consist of three improvement areas and one or more series of bonds may be issued for each improvement area. The reimbursement of the Advances may occur in full from the proceeds of any series of bonds (i.e., there is no requirement to allocate the reimbursement of Advances to any particular improvement area). On or within fifteen (15) business days after the date of issuance and delivery of the bonds, the Deposit Manager shall return any unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 and Section 2 above but have not yet been paid by the City or paid from bond proceeds, less any unreimbursed City Initial Costs, plus an amount equal to the Advances theretofore expended, without interest, to the extent such amount is funded with proceeds of the bonds and said reimbursement is otherwise permitted under the Act.

(b) If the qualified electors of the CFD do not approve the proposed special tax to be levied on the property within the CFD and the issuance of bonds by the City for the CFD, the Deposit Manager shall, within fifteen (15) business days of the confirmation of the election results by the City Council, return any then unexpended Advances to the Landowner, without interest, less (i) an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 and Section 2 above but have not yet been paid by the City, and (ii) the City Initial Costs incurred by the City through the confirmation of the election results.

(c) If the election is successful and the CFD is formed, but such bonds are not issued, the Deposit Manager shall, within fifteen (15) business days after adoption of the resolution stating the intent of the City to terminate proceedings under the Act with respect to the issuance of bonds for the CFD, return any then unexpended Advances to the Landowner, without interest, less (i) an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 and Section 2 above but have not yet been paid by the City and (ii) the City Initial Costs incurred by the City through the adoption of the resolution.

(d) If the proceedings for the formation of the CFD or issuance of bonds are abandoned in writing by the Landowner, within fifteen (15) business days after receipt by the City of such written instructions, the City shall return any unexpended Advances to the Landowner, without interest, less (i) any amount equal to any Initial Costs incurred by the City or that the City otherwise is committed to pay, which costs would be subject to payment under Section 1 and Section 2 above but have not yet been paid by the City, and

(ii) the City Initial Costs incurred by the City through the receipt of the written instructions by the Landowner.

Section 4. Landowner Information. As part of the City's evaluation and consideration of the CFD and any proposed bond issuance, if applicable, Landowner will provide the City with certain reports, studies and information including, but not limited to, information regarding the proposed development, development plans, financial condition and other information relating to the Landowner and related entities (and other CFD landowners, if applicable), non-CFD funding sources and their providers, among other information. Landowner acknowledges that such information, along with the reports and studies referred to in Section 2, are integral aspects of the City's evaluation and consideration of a proposed CFD and any proposed bond issuance and may affect decisions by the City in connection therewith. Landowner further acknowledges that failure to provide complete and accurate information and/or failure to notify the City of material changes in such information may result in the City temporarily or permanently suspending progress toward CFD formation and/or bond issuance.

Section 5. 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 53314.9(b) of the Act. The City shall in no event be liable hereunder other than to return any unexpended and uncommitted portions of any Advances as provided in Section 3 above, to provide an accounting under Section 9 below, and, if the bonds are issued by the City for the CFD, to reimburse the Landowner from the proceeds of the bonds as described in Section 3 above. The City shall not be obligated to advance any of its own funds with respect to the establishment of the CFD or for any of the other purposes listed in Section 2 hereof. No member of the City Council of the City or member, associate member, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 6. No Obligation to Form CFD. The provisions of this Agreement shall in no way obligate the City to form the CFD or to take any action with respect thereto. To the extent that the CFD is formed, the amount and timing of the issuance of bonds secured by CFD special taxes shall be in the sole discretion of the City and the City is making no assurances to the Landowner that bond proceeds will be available to pay or reimburse any CFD related costs. The Landowner further acknowledges that the City's existing Local Goals and Policies and Appraisal Standards for Community Facilities Districts may be amended, revised and/or supplemented and should not be relied upon as an indication of what the City may find to be acceptable in connection with the CFD and/or related bonds.

Section 7. Indemnification. The Landowner hereby agrees to assume the defense of, indemnify and hold harmless the City, and each of its Council members, officers, employees and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the Landowner or any of its members, officers, employees, contractors or agents in connection with formation of the CFD and the issuance of any bonds by the City for the CFD. The City shall promptly notify the Landowner of any such claim, action or proceeding, and the City shall cooperate in the defense thereof. The obligations of the Landowner under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, its Council members, officers, employees or agents.

Section 8. 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 9. Accounting. The Advances may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records of the expenditure of the Advances. The City shall provide the Landowner with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement within fifteen (15) business days of receipt by the Deposit Manager of a written request therefore submitted by an authorized officer of the Landowner. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be considered an Initial Cost.

Section 10. Reimbursement of Other Costs of Landowner. Nothing contained herein shall prohibit reimbursement of other costs and expenses of the Landowner incurred in connection with the CFD from the proceeds of the bonds to the extent permitted by the Act and the City. Any such reimbursement shall be made solely from the proceeds of the bonds and only to the extent otherwise permitted under applicable law and provided for in the proceedings for the formation of the CFD and issuance of the bonds.

Section 11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first written above.

LANDOWNER:

OAK KNOLL VENTURE ACQUISITION, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: Authorized Representative

CITY:

CITY OF OAKLAND

By: _____

Name: _____

Its: _____

Dated: _____

EXHIBIT A

ESTIMATED INITIAL COSTS

Provider	Estimated Initial Cost
Special Tax Administrator	\$20,000.00
Special Tax Consultant	31,000.00
Municipal Advisor	20,000.00
Bond Counsel	21,790.00
City Out-of Pocket Costs (recording, publication, etc.)	15,000.00
Total Estimated Initial Cost:	107,790.00