

**AMENDED AND RESTATED
DEPOSIT AND REIMBURSEMENT AGREEMENT**

**City of Fairfield
Community Facilities District No. 2023-1
(One Lake Planning Area 5)**

THIS AMENDED AND RESTATED DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement"), dated for convenience as of September 3, 2024, is by and between the City of Fairfield (the "City") and One Lake Holding LLC, a Delaware limited liability company ("Developer"), and amends and restates that certain Deposit and Reimbursement Agreement, dated for convenience as of January 1, 2023 (the "Original Agreement"), by and between the City and the Developer.

RECITALS:

WHEREAS, Developer is the master developer of certain real property within the boundaries of a master plan development project known as One Lake;

WHEREAS, the City Council of the City previously conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to (i) form (a) "City of Fairfield Community Facilities District No. 2023-1 (One Lake Planning Area 5)" (the "CFD"), (b) "Improvement Area No. 1 of the City of Fairfield Community Facilities District No. 2023-1 (One Lake Planning Area 5)" ("Improvement Area No. 1"), and (c) "City of Fairfield Community Facilities District No. 2023-1 (One Lake Planning Area 5) (Future Annexation Area)" (the "Future Annexation Area"), (ii) authorize the levy of special taxes in Improvement Area No. 1 and (iii) authorize the issuance of bonded indebtedness and other debt for the CFD (collectively, "Bonds");

WHEREAS, the City Council initiated the formation proceedings described in the preceding clause pursuant to a petition from the Developer submitted pursuant to Section 53318 of the Act;

WHEREAS, Section 53318 of the Act provides that if a petition signed by the owners of not less than 10% of the land within the territory proposed to be included in a community facilities district and not proposed to be exempt from the special tax, is filed with the legislative body requesting that formation proceedings be commenced, the legislative body shall upon the payment of a fee sufficient to compensate the local agency for all costs incurred in conducting the proceedings, adopt a resolution of intention to establish the community facilities district, subject to certain limitations set forth in the Act;

WHEREAS, the City and Developer executed the Original Agreement to specify the terms of the advances of funds by Developer and reimbursement of such advances in connection with the formation proceedings;

WHEREAS, Section 53332 of the Act provides that if a petition signed by 25 percent or more of the owners of the land within a community facilities district that is not exempt from the special tax is filed with the legislative body requesting that proceedings be commenced to

undertake certain changes to the community facilities district, including changes to the rate or method of apportionment of an existing special tax and the increase of bonded indebtedness limits, the legislative body shall within 40 days of the payment of a fee by the landowners determined by the legislative body to be sufficient to compensate the local agency for all costs incurred in conducting such change proceedings, adopt a resolution of consideration in the form specified in Section 53334 of the Act;

WHEREAS, the City has received a petition signed by the Developer to undertake proceedings (the "Change Proceedings") to (i) amend and restate the Rate and Method of Apportionment of Special Tax for Improvement Area No. 1 (the "Improvement Area No. 1 Rate and Method"), (ii) increase the bonded indebtedness limit for Improvement Area No. 1 (the "**Improvement Area No. 1 Bonded Indebtedness Limit**") from \$90,000,000 to \$100,000,000, and (iii) increase the bonded indebtedness limit for property in the CFD but not located in Improvement Area No. 1 (the "**Non-Improvement Area No. 1 Bonded Indebtedness Limit**") from \$15,000,000 to \$20,000,000; and

WHEREAS, the Developer is the owner of at least 25% of the territory in Improvement Area No. 1 and not exempt from the special tax; and

WHEREAS, in addition to the funds previously advanced by Developer to the City under the Original Agreement, Developer 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 connection with the Change Proceedings, provided that any advances are reimbursed to Developer from the proceeds of any Bonds to the extent legally permissible; and

WHEREAS, the City and Developer wish to amend and restate the Original Agreement to specify the terms of the advances of funds and reimbursement in connection with the Change Proceedings.

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:

AGREEMENT:

Section 1. The Advances.

(a) In connection with the formation of the CFD, Developer provided to the City the amount of \$168,000 (the "Initial Advance"), to be used by the City to pay the "Initial Costs" (as defined below).

Developer hereby agrees to provide \$36,000, in the form of cash, electronic transfer or a check payable to the City (the "Second Advance"); the Second Advance shall be delivered to the City's Finance Director prior to the execution of this Agreement by the City, and no later than the date on which the City Council considers the resolution required by Section 53334 of the Act ("Resolution of Consideration"). The City, by its execution hereof, acknowledges receipt of the Second Advance. The Second Advance represents costs related to the Change Proceedings that the City and Developer have concluded are not being funded with other moneys provided by Developer.

(b) Developer further agrees to advance any additional amounts (collectively with the Initial Advance and the Second Advance, the "Advances") incurred or reasonably expected to be incurred by the City, within 15 business days of any written demand therefore by the City Manager of the City (the "City Manager") or the Director of Finance of the City (the "Finance Director"). Developer shall pay any additional Advances to the City or directly to a third party, by such date, and as otherwise specified by the City Manager or the Finance Director in writing to Developer. The City shall use good faith efforts to provide Developer with prior notice whenever the City believes Initial Costs will exceed Advances made by Developer.

(c) If Developer fails or refuses to remit to the City any additional Advances required to be paid under this Agreement at the time required by subsection (b) above, then, as the sole remedy of the City hereunder, the following shall apply: all processing by the City of the Change Proceedings shall cease until such time as the additional Advance is made (at which time all process by the City of the Change Proceedings shall immediately resume) and the City shall be entitled to instruct all consultants to cease performance of their services related to the CFD Change Proceedings until such time as the requested amounts are paid by Developer (at which time they shall be instructed to continue performance of their services related to the CFD Change Proceedings); the City shall be entitled to all rights of indemnification under Section 8 hereof; and Developer shall remain obligated to pay any Initial Costs already incurred by the City or which the City is committed to pay.

(d) 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, the Change Proceedings and the issuance of Bonds (such as engineering, legal counsel, including special counsel to the City, financial advisory and special tax consultant), excluding the fees and expenses of such consultants that are payable on a contingent basis;

(ii) the costs of appraisals, absorption studies and other reports necessary or deemed advisable by City staff in connection with the formation of the CFD, the Change Proceedings and the issuance of Bonds;

(iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the CFD, the special tax to be levied therein or any Bonds, including those related to the formation of the CFD and those related to the Change Proceedings;

(iv) the costs of any action prosecuted in the superior court to validate the CFD, the special tax to be levied therein or any Bonds;

(v) a reasonable charge, as determined by the City Manager in his sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the CFD formation proceedings, the Change Proceedings, special tax formulation, facilities acquisition and Bond issuance proceedings;

(vi) any costs incurred by the City in connection with discussions with or applications to bond rating agencies, if applicable; and

(vii) any and all other actual costs and expenses incurred by the City with respect to the formation of the CFD, the Change Proceedings and issuance of the Bonds.

Section 2. Reimbursement of Advances. The Advances are subject to reimbursement only as follows:

(a) If Bonds are issued, the City shall, no later than 30 days after the date the first series of Bonds is issued, (i) return any then-unexpended Advances to Developer, without interest, and (ii) reimburse the Developer for the remaining balance of the Advances, without interest, but solely from and only to the extent of available proceeds of the first series of Bonds and only to the extent permitted under the Act.

(b) If the qualified electors of the CFD do not approve the levy of the special taxes within the CFD and the City determines to abandon the proceedings to form the CFD, the City shall, no later than 30 days after the City Council confirms the election results, return any then-unexpended Advances to Developer, without interest, less an amount equal to any Initial Costs that have been incurred or committed by the City, but not yet paid by the City, from the Advances.

(c) If the qualified electors of the CFD approve the levy of the special taxes within the CFD but the City determines for any reason to abandon the CFD before any Bonds are issued, the City shall, no later than 30 days after the City Council adopts a resolution terminating the CFD, return any then-unexpended Advances to Developer, without interest, less an amount equal to any Initial Costs that have been incurred or committed by the City, but not yet paid by the City, from the Advances.

Section 3. Reimbursement of Other Costs. Nothing contained herein shall prohibit reimbursement of other costs and expenses of Developer incurred in connection with the CFD or the Change Proceedings from the proceeds of the Bonds. Any such reimbursement shall be made solely from the proceeds of the Bonds and only to the extent otherwise permitted under the Act and otherwise provided for in the formation proceedings and 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. 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 2 above, to provide reimbursement to the Developer for Advances expended in the manner and from the sources set forth in Section 2 above, and to provide the accounting under Section 7 below. The City shall not be obligated to advance any of its own funds for the reimbursement of Developer under this Agreement, with respect to the CFD formation proceedings, the Change Proceedings or in connection with the issuance of the Bonds. No member of the City Council of the City or officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. No Obligation to Complete Formation Proceedings or Issue the Bonds. The provisions of this Agreement shall in no way obligate the City to complete the Change Proceedings, issue the Bonds or to take any action with respect thereto.

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 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 Developer with a written accounting of Advances expended pursuant to this Agreement on a periodic basis, and the cost of providing the accounting shall be considered an Initial Cost. Developer shall be deemed to have expressly waived its right to any further accounting and its right to challenge any disbursements made by City from the Advances 90 days following the earlier of either the City's reimbursement of unexpended Advances pursuant to Section 2 of this Agreement or the City sending notice that all Advances are expended and that no further Advances are required, whichever event first occurs.

Section 8. Indemnification. Developer hereby agrees to assume the defense of, indemnify and hold harmless the City, and each of its 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 (i) any acts or omissions of Developer or any of its members, officers, employees, contractors or agents in connection with the formation of the CFD or the Change Proceedings and (ii) any acts or omissions of Developer or any of its members, officers, employees, contractors or agents in connection with the issuance of the bonds.

The City shall promptly notify Developer of any such claim, action or proceeding, and the City shall cooperate in the defense thereof. The obligations of Developer under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, its members, officers, employees, contractors, or agents.

Section 9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Effect of this Agreement. This Agreement supersedes the Original Agreement in its entirety, and the Original Agreement shall be of no further force or effect.

Section 12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 13. Electronic Signatures.

(a) The parties hereto acknowledge and agree that this Agreement may be executed by one or more electronic means (hereinafter referred to as "Electronic Signatures"). Each party hereto agrees that Electronic Signatures provided by such party shall constitute effective execution and delivery of this Agreement by such party to all other parties to or relying on this Agreement. Each party hereto agrees that Electronic Signatures shall constitute complete and satisfactory evidence of the intent of such party to be bound by those signatures and by the terms and conditions of this Agreement as signed. Each party agrees that Electronic Signatures shall be deemed to be original signatures for all purposes.

(b) Each party hereto agrees to accept Electronic Signatures provided by any and all other parties to this Agreement as (i) full and sufficient evidence of intent by such parties to be bound hereunder, (ii) effective execution and delivery of this Agreement and (iii) constituting this Agreement an original for all purposes, without the necessity for any manually signed copies to be provided, maintained or to exist for back up or for any other purpose.

(c) If Electronic Signatures are used to execute this Agreement, each party hereto hereby accepts the terms of, and intends to and does sign, this Agreement by its Electronic Signature hereto.

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

DEVELOPER:

ONE LAKE HOLDING LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

CITY:

CITY OF FAIRFIELD

By: _____

Name: _____

Its: _____