

ATTACHMENT 1

REIMBURSEMENT AGREEMENT

Between

CITY OF ALAMITOS
a California Municipal Corporation

and

LOS ALAMITOS MEDICAL CENTER, INC.
a California Corporation

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 5th day of October, 2009, by and between the City of Los Alamitos, a California Municipal Corporation (the "City"), and the Los Alamitos Medical Center, Inc. a California Corporation (the "Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Los Alamitos, County of Orange, California. The Property is more particularly described as an area approximately 18.3 gross acres in size and is bordered by Katella Avenue on the south, Cherry Street on the west, Catalina Street and Florista Street on the north, and Bloomfield Street on the east.

B. The Applicant is contemplating the development of the Property through the development of a Twenty Year Master Plan which will be incorporated into The Los Alamitos Medical Center Specific Plan. The Applicant has submitted applications for various discretionary land use approvals for the development of the Property including, without limitation, General Plan Amendment No. GPA09-01 and Specific Plan No. SP09-01, as well as all related environmental review pursuant to the California Environmental Quality Act ("CEQA"). All of the above shall be referred to collectively as the "Project."

C. To provide the City with the needed expertise and information necessary for the City's review process concerning the Project, it is or may become necessary for the City to access the services of certain outside legal, environmental, planning, and other experts for the Project ("Consultants").

D. As a condition to the City's completion of the Project review process, the Applicant has agreed to reimburse the City for the Consultants' costs and expenses related to the City's Project review process in the manner and amounts set forth in this Agreement. The Applicant's reimbursement of City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process the Applicant's Project.

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of its fact finding process relating to the review of the Applicant's proposed Project and uses of the Property, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The contemplated general scope of work of the Consultants for the Project is attached hereto as Exhibit "A" and incorporated herein by reference, but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicant's Project.

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City has thus far retained the following as Consultants pursuant to this Agreement, but shall have the right to retain any additional consultants or sub-consultants pursuant to this Agreement: (1) RBF Consulting, including any sub-consultants determined by RBF and City to be necessary (CEQA Services); (2) Best Best & Krieger LLP (Legal Services); and (3) William M. Huber P.E. (Engineering).

5. Applicant's Reimbursement of Fees, Costs and Expenditures. The Applicant shall reimburse the City for one hundred percent (100%) only of the actual fees, costs and other expenditures incurred by the City relative to the Consultant costs ("Costs"). The City has preliminarily reviewed the scope of work required and has estimated the aggregate Costs for all consultants to be approximately One Hundred Ninety Eight Thousand Four Hundred Ten Dollars (\$198,410.00) ("Estimated Costs"). Within ten (10) calendar days of the execution of this Agreement, the Applicant shall submit a deposit in the amount of Fifty Thousand Dollars (\$50,000) to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account").

As the Consultants invoice the City for fees, costs, and expenditures associated with the Project, the City may draw upon the Deposit Account to make the required payments. At any time that the Deposit Account drops below Fifteen Thousand Dollars (\$15,000), the City may make demand on Applicant to replenish the Deposit Account to Fifty Thousand Dollars (\$50,000), and Applicant shall submit the required amount of funds to City within ten (10) calendar days. In the event Applicant fails to make any required deposit, City shall have the right to consider Applicant's Project applications as withdrawn and cease processing such applications.

City shall not exceed the Estimated Costs without consulting with Applicant regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs"). The City shall use reasonable good faith efforts to consult with the Applicant prior to amending any scope of services to be provided by the Consultants and incurring Excess Costs. The Applicant's obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing Applicant with written notice of the amendment of the scope of services to be performed by any Consultants and the estimated cost thereof prior to the commencement of work. Once the City provides such notice, Applicant shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above, including, but not limited to, replenishing the Deposit Account.

For purposes of this Section , the City shall be deemed to have consulted with the Applicant when the City has provided written notice to the Applicant that the City reasonably anticipates that it will incur, or has incurred, Excess Costs. If, after consultation, the Applicant disagrees with the City's incurring of Excess Costs, then the Applicant's sole and exclusive remedy will be to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

The City shall maintain accurate records of invoices received from, and payments made to, the Consultants resulting from the Project, and will provide a payment summary to Applicant within a reasonable time upon request. In the event that excess funds remain in the Deposit Account upon conclusion of the Project and after all final payments to the Consultants have been made, the City agrees to refund that excess amount, if any, to Applicant within fifteen (15) days of final payment to the Consultants. Alternatively, if the Costs of the services of the Consultants exceed the Estimated Costs and Excess Costs, if any, then Applicant shall remain obligated to pay

for all such Costs. Applicant shall pay any such amount within ten (10) calendar days of demand for payment by City.

6. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and fully executed by the parties, and shall terminate when all services required for the Project by Consultants have been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination. The Applicant's obligation to reimburse the City as provided in this Agreement shall survive the termination of this Agreement pursuant to Section 7.

7. Early Termination.

7.1 By City. The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth in Section 6 above, without cost or liability to the City, upon thirty (30) days prior written notice to the Applicant in the event that Applicant either: (1) fails to satisfy any obligation of this Agreement; or (2) fails to reasonably prosecute its application(s) for the Project. In the event of such termination, Applicant shall be deemed to have withdrawn its application(s) for the Project.

7.2 By Applicant. The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 6 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the proposed effective date of termination. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination.

Within two (2) working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination.

8. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld. In determining whether to approve a request by the Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

9. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Los Alamitos.

10. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

11. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever legal fees and expert or other costs, in their entirety, including actual attorneys' fees, which may be incurred by the City in defense of such action or proceeding. This City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate, and the Applicant shall reimburse the City for any and all attorneys' fees and expert or other costs incurred by the City as a result of such third party action or proceeding. Applicant may, at any time, notify City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicant shall be obligated to reimburse City for any and all costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorney fees and expert or other costs.

12. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by either the City or the Applicant against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

13. Jurisdiction and Venue. This Agreement is executed and is to be performed in Los Alamitos, Orange County, California. Any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Orange, California. The City and the Applicant each consent to the personal jurisdiction of the court in any such action or proceeding.

14. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

15. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

16. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

17. Notices. Notices required under this Agreement shall be sent to the following:

If to the City:

Jeffrey L. Stewart, City Manager
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720-5600
Phone (562) 431-3538 x 201
Fax (562) 493-0678

If to the Applicant:

Scott Rifkin, Chief Operating Officer
Los Alamitos Medical Center, Inc.
3751 Katella Avenue
Los Alamitos, CA 90720
Phone (562) 799-3184
Fax (562) 493-2812

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.
- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 18 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

CITY OF LOS ALAMITOS
a California Municipal Corporation

By: _____
Troy Edgar
Mayor

ATTEST:

By: _____
Jeffrey L. Stewart
City Clerk

APPROVED AS TO FORM:

Dean Derleth
City Attorney

**LOS ALAMITOS MEDICAL CENTER, INC.
a, California Corporation**

By: _____
Scott Rifkin, Chief Operating Officer
Los Alamitos Medical Center, Inc.

ATTEST:

By: _____
Jeffrey L. Stewart
City Clerk

APPROVED AS TO FORM:

Dean Derleth
City Attorney

EXHIBIT "A"

SCOPE OF SERVICE FOR CONSULTANTS

RBF CONSULTING

Any and all environmental consulting services needed for the Project, including, but not limited to, any needed studies to be performed by RBF or its selected sub-consultants (e.g. traffic, drainage, air quality, water or other studies).

BEST BEST & KRIEGER LLP

Any and all legal services needed for the Project, including, but not limited to, any needed experts or sub-consultants.

WILLIAM M. HUBER P.E.

Any and all engineering services needed for the Project, including, but not limited to, any needed experts or sub-consultants.

OTHER CONSULTANTS

Any and all other consultants determined by the City to be reasonably necessary for its review and processing of the Project application(s).