

MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY OF SAN MATEO AND CITY OF EAST PALO ALTO REGARDING A POTENTIAL REAL PROPERTY EXCHANGE

This MEMORANDUM OF UNDERSTANDING (“MOU”), entered into this _____ day of ____, 2022 (the “Effective Date”), by and between the County of San Mateo (“County”) and the City of East Palo Alto (“City”) (each a “Party”, and collectively, the “Parties”) sets forth the respective responsibilities of each Party related to the Parties’ consideration of a potential real property exchange.

RECITALS

WHEREAS, County is the owner of certain real property located at 1266 Beech Street, in the City of East Palo Alto, State of California, consisting of approximately 1.85 acres, designated as San Mateo County Assessor’s Parcel Number 063-600-060, hereinafter referred to as the “County Property;” and

WHEREAS, City is the owner of certain real property in the City of East Palo Alto, State of California, consisting of approximately 0.36 acres, located at 2277 University Avenue, between Runnymede Street and Bell Street, designated as San Mateo County Assessor’s Parcel Number 063-302-460, hereinafter referred to as the “City Property”; and

WHEREAS, City wishes to construct or cause the construction an expansion of Martin Luther King, Jr. Park (“MLK Park”) on the County Property to serve the recreation needs of the local area (“Proposed City Use”); and

WHEREAS, County wishes to cause the construction of affordable housing on the City Property by issuing a request for proposals (“RFP”) and selecting an affordable housing developer to which County would ground lease the City Property for the construction and operation of affordable housing (“Proposed County Use”); and

WHEREAS, the Zoning and General Plan land use designations of the City Property support a high-density residential use at the site, and City supports the Proposed County Use of constructing high-density affordable housing at the site; and

WHEREAS, the Parties are committed to exploring a potential exchange of the County Property and the City Property to facilitate the Proposed City Use of County Property and Proposed County Use of City Property (“Property Exchange”); and

WHEREAS, California Government Code section 25365(a) authorizes counties, by a four-fifths vote of the Board of Supervisors, to exchange real property with a city upon the terms and conditions as are agreed upon, where the real property to be acquired is required for County use; and

WHEREAS, California Government Code section 37351 authorizes cities to exchange real property as is necessary or proper for municipal purposes; and

WHEREAS, pursuant to the terms and conditions set forth herein, each Party wishes to complete due diligence activities to determine whether or not the Property Exchange is desirable.

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THEREFORE, the Parties agree to be bound by the following terms in this MOU:

1. Term and Termination

Subject to compliance with all terms and conditions, the term of this MOU shall be from _____, 2022 through _____, 2023 ("MOU Term"). This MOU may be terminated by either Party upon thirty (30) days written notice.

2. Due Diligence Tasks

2.1 Overview. The Parties shall use reasonable, good faith efforts to accomplish the due diligence tasks set forth in this Section during the MOU Term.

2.2 Intent of MOU. Through this MOU, the Parties are intending to commit to undertaking certain due diligence activities to determine whether the Property Exchange is viable. Subsequent to the completion of due diligence activities, each Party shall assess its respective interest in the Property Exchange.

2.3 Delivery of Materials. Each Party agrees to exchange non-privileged information and documents in its possession, which may be useful in evaluating the Property Exchange, with the other Party, This includes, but is not limited to, site acquisition history, site funding history, site development history, site proposed development history, site use history, site maintenance and rehabilitation history, and a history of code enforcement actions, nuisances and/or any known illegal activities at the site.

2.4 Appraisals. Upon mutual agreement between City and County with respect to the selection of an appraiser, an appraisal of the County Property and City Property shall be conducted to determine the valuation of each site. Should the appraisals reflect a difference in the valuation of City Property and County Property, City and County shall discuss possible ways to negotiate the Property Exchange with an existing difference in valuation.

2.5 Environmental Review. During the MOU Term, County and City shall review existing environmental documentation related to the City Property and the County Property, such as environmental assessments and feasibility studies, to determine whether (1) City's Proposed Use and County's Proposed Use are achievable based on existing environmental conditions of the County Property and City Property, and (2) additional environmental reports are necessary for County Property and/or City Property in order to comply with the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), and any other applicable laws or regulations.

2.6 Financial Feasibility. County and City shall engage in efforts to determine whether Proposed County Use and Proposed City Use are financially feasible.

2.7 Existing Uses. County and City to investigate whether there would be any impacts, such as residential or economic displacement, if the Proposed County Use and the Proposed City Use were put into effect, and to the extent such impacts exist, how they will be addressed and/or mitigated.

2.8 Title Reports. County shall cause a reputable title company to issue a preliminary title report for County Property, and City shall cause a reputable title company to issue a preliminary title report for City Property. County and City shall review title report for City Property and title report for County Property to identify any impacts on Proposed City Use and Proposed County Use.

2.9 County and City Costs Associated with the MOU. Each Party shall be responsible to pay its respective costs and expenses (including legal fees, consultant costs and staff time) incurred in undertaking due diligence tasks set forth in this section and fulfilling its respective obligations under this MOU, including but not limited to the costs of property appraisals, title reports, and the use of economic consultants used to evaluate the financial feasibility of a proposed use of the properties that are the subject of this MOU.

2.10 Schedule of Performance. Subsequent to the execution on this MOU, the Parties agree to develop schedule for completing due diligence tasks set forth in this section, including establishing a date for identifying an appraiser, date(s) for obtaining appraisals of the City Property and the County Property, and date(s) for completing an environmental review of the City Property and the County Property.

3. General Provisions

3.1 Authorizations. The County Manager of the County of San Mateo and the City Manager of the City of East Palo Alto, or their respective designees, are authorized to modify the MOU and its terms, resolve conflicts, and/or otherwise grant approvals on behalf of their respective agencies, provided such approvals are not otherwise vested in the authority of the agency's governing board. All such modifications and approvals shall be in writing and signed by both Parties.

3.2 Mutual Indemnification. Pursuant to Government Code Section 895.4, each Party agrees to fully indemnify, defend, and hold the other Party (including its appointed and elected officials, officers, employees, and agents) harmless and free from any damage or liability imposed for injury (as defined by Government Code Section 810.8) or liability occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its appointed or elected officials, officers, employees, or agents, under or in connection with any responsibility, authority, or jurisdiction delegated to such Party under this MOU. Neither Party, nor any appointed or elected official, officer, employee, or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party, its appointed or elected officials, officers, employees, or agents, under or in connection, with any authority, responsibility, or jurisdiction delegated to such other Party under this MOU.

3.3 Choice of Law; Venue. The formation, interpretation and performance of this MOU shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this MOU shall be in San Mateo County Superior Court.

3.4 Notices. Any notice to be given to the Parties shall be in writing and shall be served, either personally or by mail, to the following:

In case of the County, to:

Name/Title: Michael Callagy, County Manager

Address: 400 County Center, 1st Floor, Redwood City, CA 94063

In the case of the City, to:

Name/Title: Jaime M. Fontes, City Manager

Address: 2415 University Avenue, East Palo Alto, CA 94303

Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail, reliable overnight courier, or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

3.5 Construction. All section headings are for reference only and shall not be considered in construing this MOU.

3.6 Severability. If any provision of this MOU shall be held to be invalid, void or unenforceable, the validity, legality or enforceability of the remaining portions of this MOU shall not in any way be affected or impaired thereby.

3.7 Entire Agreement. This MOU sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This MOU may be modified only as provided in Section 3.1, "Authorizations."

3.8 Cooperative Drafting. This MOU has been drafted through a cooperative effort of all the Parties, and all the Parties have had an opportunity to have the MOU reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this MOU.

3.9 Representation re Authority of Parties/Signatories. Each person signing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU. Each Party represents and warrants to the other that the execution and delivery of the MOU and the performance of such Party's obligations hereunder have been duly authorized and that the MOU is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

3.10 No Third-Party Beneficiaries. Except as expressly set forth herein, nothing contained in this MOU is intended to or shall be deemed to confer upon any person, other than the Parties, any rights or remedies hereunder.

3.11 Debt Limitation. The Parties are subject to laws or policies which limit their ability to incur debt in future years. Nothing in this MOU shall constitute an obligation of future legislative bodies of the County or City to appropriate funds for the purpose of this MOU.

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3.12 Conflict of Interest. Each of the Parties shall avoid all conflicts of interest in the performance of this MOU and shall immediately notify the other Parties should a conflict of interest arise that would prohibit or impair its ability to perform under this MOU.

3.13 Disputes. The Parties agree that, with regard to all disputes or disagreements arising under this MOU that are not resolved informally at the staff level after a good faith attempt, the Parties may, at their sole and mutual discretion, agree to engage in mediation, and the costs of any such mediation shall be divided equally between the Parties.

3.14 Non-Discrimination. The Parties will not discriminate, in any way, against any person based on sex, pregnancy, childbirth or related medical conditions, race, veteran status, religion, color, national origin or ancestry, physical or mental disability, medical condition, marital status, age, gender (including gender identity and gender perception), sexual orientation, use of family medical leave, genetic testing, or any other basis protected by federal or state law. This policy shall apply to all employment practices.

3.15 Counterparts. This MOU may be executed in counterparts, each of which will be deemed an original and all of which together will constitute a complete agreement. Moreover, this MOU may be signed by electronic signature and copies of original signatures shall be treated the same as the originals.

AGREED:

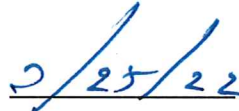
Michael Callagy, County Manager
County of San Mateo



Jaime M. Fontes, City Manager,

City of East Palo Alto

DATE


2/25/22

DATE