

RESOLUTION NO. .

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION: A) AUTHORIZING AND DIRECTING THE EXECUTION BY THE COUNTY MANAGER, OR DESIGNEE(S), OF ALL DOCUMENTS NECESSARY OR APPROPRIATE TO EXTEND THE TERM OF THE LEASE BETWEEN 2700 MIDDLEFIELD ROAD LLC AND THE COUNTY OF SAN MATEO FOR THE FAIR OAKS HEALTH CENTER AT 2710 MIDDLEFIELD ROAD; AND B) DIRECTING THE PREPARATION OF FINAL ORDERS OF CONDEMNATION IN TWO PROCEEDINGS IN EMINENT DOMAIN FOR EASEMENT AND ROAD RIGHT-OF-WAY AND SIMILAR RIGHTS ACROSS THE PROPERTY; AND C) CONFIRMING VARIOUS PROPOSED ACTIONS TO FIX THE TERMS OF OTHER OBLIGATIONS BETWEEN THE PARTIES

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, on or about June 1, 2011, the County entered into a Lease Agreement ("Lease Agreement") with 2700 Middlefield Road LLC ("Landlord") for a thirty-year term concerning the property located at 2710 Middlefield Road in the unincorporated North Fair Oaks area of San Mateo County ("Property"), which Lease Agreement remains valid and includes two five-year renewal options; and

WHEREAS, on or about June 1, 2011, the County entered into a Real Estate Option Agreement ("Option Agreement") with Landlord and Diversified Capital, LLC for an option to purchase the Property; and

WHEREAS, in April 2015, the County initiated litigation against Landlord, Diversified Capital, LLC and Nariman Teymourian (collectively, "Litigation Defendants"), who then filed a cross-complaint against the County ("Litigation"); and

WHEREAS, on April 28, 2017, the County and Litigation Defendants (collectively, "Parties") entered into a Settlement Agreement and General Mutual

Release (“Litigation Settlement Agreement”) resolving the Litigation under which Litigation Defendants agreed to pay the County the sum of \$1,600,000, as well as certain continued monthly interest payments; and the County agreed to conditionally rescind the Option Agreement affording the County the option to purchase the Property on certain terms; and

WHEREAS, on March 16, 2021, the County filed in San Mateo County Superior Court an eminent domain action, which has been assigned Case Number 21-CIV-01398, seeking to obtain temporary and permanent easements necessary to construct the County’s Middlefield Road Improvement Project (“Improvement Project Action”), and in that action, the County deposited with the Court \$527,000, the amount of probable compensation for the easements at issue in the Improvement Project Action; and

WHEREAS, on July 14, 2021, the County filed a separate eminent domain action in San Mateo County Superior Court, which has been assigned Case Number 21-CIV-03809, seeking a public access easement, water line easement, garden easement, and a temporary construction easement, related to the County’s plans to have constructed a housing project adjacent to the Property (“Housing Project Action”) with just compensation of \$715,891 comprising the appraised value of the easements at issue in the Housing Project Action plus attorneys’ fees and costs; and

WHEREAS, the Landlord has requested, and County has agreed, that the Parties would each benefit from a global resolution of the amounts that remain due and owing by the Litigation Defendants to the County related to the Litigation, the amounts due and owing to Landlord for the pending eminent domain actions, and the term of the Lease Agreement and Option Agreement, which global resolution shall take effect upon approval by the Board of Supervisors pursuant to this resolution.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board of Supervisors wishes to enter into and memorialize a global resolution regarding the amounts that remain due and owing by the Litigation Defendants to the County related to the Litigation, as well as with respect to the Improvement Project Action and the Housing Project Action, and to modify the Lease Agreement to extend its term and to confirm the rescission of the Option Agreement.

IT IS FURTHER DETERMINED AND ORDERED that the County Manager, or his designee(s), be and is hereby authorized and directed to execute all documents necessary or appropriate to achieve the following:

1. Provide for the extension of the term of the Lease Agreement for an additional five years at an annual Base Rent rate during that five-year extended period that shall not exceed a 15% increase (i.e., the annual Base Rent shall be no more than 115%) of the annual Base Rent for Year 30 set forth in Schedule 1 of the Lease Agreement.
2. Provide for entry of a Final Order of Condemnation resulting in resolution of San Mateo County Superior Court Case Number 21-CIV-01398 vesting ownership of the easements in the County in exchange for Landlord's retention of the deposit of the amount of probable compensation totaling \$527,000.
3. Provide for entry of a Final Order of Condemnation resulting in resolution of San Mateo County Superior Court Case Number 21-CIV-03809 vesting ownership of the easements in the County in exchange for a credit of \$715,891 against the amounts due and owing by the Litigation Defendants pursuant to the Litigation Settlement Agreement.

4. Confirm rescission of the Option Agreement, and cancellation of limits on financing of the Property and of amounts otherwise payable to the County pursuant to the terms of the Option Agreement.
5. Provide for payment to County by Litigation Defendants of the balance owing under the Litigation Settlement Agreement, as determined by County, in the form of 48 equal monthly payments secured by a stipulated judgment.
6. Provide for payment to the County of \$4,300,000 if the Property is sold through a voluntary sale during the term of the Lease Agreement or if the County exercises its Right of First Refusal under Section 22 of the Lease Agreement.

IT IS FURTHER DETERMINED AND ORDERED that the County Manager, or designee(s), is hereby authorized and directed to execute a Certificate of Acceptance upon performance of all material conditions set forth herein, and any and all notices, escrow instructions, and documents required to facilitate the purposes of this Resolution.

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