

Memorandum of Understanding
Between the County of San Mateo and the Town of Atherton
Regarding Lease/Leaseback Transaction

1. **Parties.** This Memorandum of Understanding Regarding Lease/Leaseback Transaction (“MOU”) is made and entered into as of the MOU Effective Date (defined herein) by and between the County of San Mateo (the “County”) and the Town of Atherton (“Atherton”). The County and Atherton may be collectively referred to herein as “Parties” and individually as “Party”.

2. **Purpose.** The purpose of this MOU is to establish the Parties’ intention, subject to the terms and conditions stated herein, to cooperate to enter into a Lease/Leaseback Transaction substantially in the form of the draft Term Sheet, Lease and Sublease Agreements attached together hereto as Exhibit A, by on or about December 1, 2021. The Parties agree that the draft Lease/Leaseback Transaction documents attached as Exhibit A are drafts and are not binding unless and until finalized and executed by both Parties and all steps have been completed to render the documents and proposed agreements final and effective in accordance with their terms.

3. **Term.** This MOU is effective upon the date last executed by the duly authorized representatives of the Parties (the “MOU Effective Date”) and shall remain in full force and effect until December 1, 2021, unless modified by written amendment executed by the Parties. This MOU may be terminated, for good cause shown, by either Party upon fourteen (14) days written Notice (with Notice given as provided in § 5(F)).

4. **Responsibilities.** Pursuant to the MOU, Atherton agrees to fully cooperate in the provision to the County of requested information, documents and the completion of any actions as the County determines may be necessary or appropriate to permit the Parties to enter into the Lease/Leaseback Transaction. The County agrees to consider any such information, documentation and actions provided and reserves all rights to reasonably determine their sufficiency. The County is and remains free to elect not to enter into the Lease/Leaseback Transaction for good cause shown. “Good cause” shall include without limitation:

(a) failure by Atherton to timely satisfy any conditions and/or requirements of closing the Lease/Leaseback Transaction, including without limitation, failure to provide to the County by October 15, 2021 (i) a true and correct copy of a title report and title insurance policy from a nationally recognized title insurance company reasonably acceptable to the County setting forth the status of title to the Demised Premises (as defined in the proposed Lease Agreement) and insuring title to same, with a certification by Atherton

that it will update such reports and policies within 21 days prior to closing as determined and requested by the County; (ii) a fair market valuation of the Demised Premises and supporting documentation reasonably acceptable to the County, with a certification by Atherton that it will update such valuation within 21 days prior to closing as determined and requested by the County; (iii) sufficient information and documentation as specified in the proposed Term Sheet, including without limitation, an adequate legal description of the Demised Premises, pro forma title insurance policy, proof of insurance (including insurance certificates and documentation for fire and extended coverage insurance, liability insurance, rental interruption or use and occupancy insurance, and worker's compensation insurance per § 5.01-06 of the Sublease), and title report, with a certification by Atherton that it will update such documents and policies within 21 days prior to closing as determined and requested by the County; and (iv) a certification by Atherton that it represents and warrants that the statements in § 4(b) and (c) and § 5(b) and (d) of the Proposed Lease Agreement are true and correct and agreeable and will immediately notify the County in writing if Atherton is unable at any time to accurately make such representations and warranties prior to closing the Lease/Lease Back Transaction.

(b) Atherton's material breach of the terms of this MOU;

(c) failure by Atherton to timely comply with reasonable requests by the County for sufficient information, documents or actions determined by the County to be necessary or appropriate to enter into the Lease/LeaseBack Transaction; and

(d) any intervening fact or circumstance (whether or not specified herein, but not arbitrarily or unreasonably specified) that materially limits either Party's ability to meet its obligations under the proposed Lease/LeaseBack Transaction.

The County agrees that if it determines not to enter into the Lease/Leaseback Transaction, it will provide fourteen (14) days written Notice of such decision and shall terminate this MOU as referenced above in Section 3.

5. General Provisions

A. Amendments. Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of California. The courts of the State of

California, County of San Mateo shall have jurisdiction over any action arising out of this MOU and over the Parties, and the venue for any such actions shall be the Superior Court for the County of San Mateo or the United States District Court for the Northern District of California.

C. Entirety of Agreement. This MOU represents the entire, integrated MOU between the Parties regarding the subject matter hereof and supersedes all prior negotiations, representations and agreements, whether written or oral.

D. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either Party may renegotiate the terms affected by the severance.

E. Third Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed to create such status. The rights, duties and obligations contained in this MOU shall operate only between the Parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only Parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

F. Notice. Any notice, demand or request required or permitted to be given or made under this MOU ("Notice") shall be in writing and will be deemed given or made when delivered in person, when sent by United States registered or certified mail, or postage prepaid, to a Party at its address specified below, with email copy as follows: If to the County: Mike Callagy, County Manager, County of San Mateo, 400 County Center Drive, First Floor, Redwood City, CA 94063, with email copy to dmccloskey@smcgov.org. If to Atherton: George Rodericks, City Manager, Town of Atherton, 150 Watkins Avenue (Temporary Trailers), Atherton, CA 94027, with email copy to: grodericks@ci.atherton.ca.us. The Parties may change their addresses for notice by notifying the other Party in the manner provided in this section.

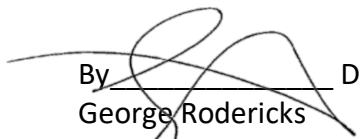
6. Signatures. In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein. This MOU may be executed in counterparts, all of which will

constitute one MOU. A copy or original of this document with all signature pages appended together will be deemed a fully executed, original MOU.

COUNTY OF SAN MATEO,

By _____ Date: _____
Michael Callagy
County Manager

TOWN OF ATHERTON,

By  _____ Date: 12/15/2020
George Rodericks
City Manager