

FIRST AMENDED AND RESTATED COMMON USE AGREEMENT FOR 2500/2510 AND 2600 MIDDLEFIELD ROAD BETWEEN THE COUNTY OF SAN MATEO AND CITY OF REDWOOD CITY

1. Parties

This Agreement is entered into this 23rd day of February, 2021, by and between the County of San Mateo, a political subdivision of the state of California ("County"), whose address is:

County of San Mateo
County Manager's Office
Real Property Division
555 County Center, 4th Floor
Redwood City, CA 94063

and the City of Redwood City ("City"), whose address is:

City Manager
City of Redwood City
1017 Middlefield Road
Post Office Box 391
Redwood City, CA 94064

Both parties agree as follows:

2. Recitals

- (i) County is the Owner of Assessor's Parcel No. 054-111-100 ("County's Parcel") which is developed with a facility for the Human Services Agency and the Fair Oaks Branch Library ("County Facility"), and is located at 2500 Middlefield Road, Redwood City.
- (ii) City is the Owner of Assessor's Parcel No. 054-111-220 ("City's Parcel"), which is commonly referred to as the Fair Oaks Community Center ("City Facility"), and located at 2600 Middlefield Road, Redwood City. County's Parcel and City's Parcel are collectively referred to as the "Parcels."
- (iii) County's Facility and City's Facility (collectively referred to as the "Facilities") are both community service facilities; therefore, the County and City desire to jointly use certain areas of the Parcels and to use a common driveway to serve as access to both above-referred facilities.
- (iv) City and County entered into a Common Use/Shared Facility License Agreement in 1995 (the "1995 Agreement") to address joint use of the parcels, as well as use, operation, and maintenance of the Fair Oaks Branch Library and related financial obligations, whereby the City operated the Fair Oaks Branch Library and the County, and subsequently the San Mateo County Library Joint Powers Authority ("Library JPA"), provided payment to the City therefore.
- (v) The City and the Library JPA are negotiating a separate agreement that will result in the Library JPA assuming operational responsibility for the Fair Oaks Branch Library, such that an agreement between the City and County as to the Fair Oaks Branch Library is no longer needed.

- (vi) The parties continue to desire to cooperate in a joint effort to set aside certain areas of each party's Parcels for joint and specific uses under the terms and conditions contained herein.

3. Terms, Covenants and Conditions

This Agreement is subject to the terms, covenants and conditions herein set forth. Each party covenants, as a material part of the consideration for this Agreement, to keep and perform each and all of said terms, covenants and conditions which are to be performed, and that this Agreement is made upon the condition of said performance.

4. Common Use of Parking Areas and Ground of County and City Parcels

County and City agree to set aside and designate certain areas of each Parcel for specific uses. The areas of each Parcel to be set aside for specific uses and each use is listed below:

- (i) Common Driveway. Pursuant to the 1995 Agreement, County and City established a common driveway to serve the Facilities as depicted on Exhibit "A" attached hereto. County and City shall each leave existing driveways open and allow ingress and egress to and through to each other's parcels by the existing driveways and common driveway.
- (ii) Parking Lot. County and City agree to each set aside and designate all parking areas of each of the respective Parcels for joint parking. County grants permission to City and City grants permission to County the right to use these parking areas as non-exclusive parking and access to and from each other's parcel. The designated areas are shown on Exhibit "A". Any change in the configuration of the parking areas shall only be made by written letter Agreement signed and approved by County's Board of Supervisors and City's City Council.
- (iii) Public Sidewalk Access. County and City agree that the sidewalk in front of City's Facility shall serve as pedestrian access to City's Facility and to County's Facility. City shall maintain striping to designate a crosswalk from the sidewalk to County's Facility.
- (iv) Notice of Significant Events. Each Party agrees to notify the other of any activities that may impact the operations of the other Party, including but not limited to, significant construction projects or large events that may significantly impact parking. Notice of such activities shall be provided to the Human Services Agency Building Manager and/or Community Center Manager, as applicable, as early as practicable but not less than seven (7) days prior to the activity.

5. Maintenance and Repair Responsibilities of Parking and Grounds Common Use Areas

County and City agree to share in the maintenance as follows:

- (i) County shall maintain and repair, at its sole cost and expense, the portion of the joint parking lot on County's Parcel.
- (ii) City shall maintain and repair, at its sole cost and expense, that portion of the joint parking lot and public access sidewalk on City's Parcel.
- (iii) City shall, at its sole cost and expense, provide parking lot sweeping for the entire joint parking area on both Parcels.

6. Maintenance and Repair Standards of Parking and Grounds Common Use Areas

Said maintenance and repair shall be performed by the parties in accordance with the following standards:

- (i) Generally maintain the grounds in good, vermin free, operating condition and appearance. Maintenance of the grounds shall include all lighting and landscaped areas.
- (ii) Repair and replace parking lot bumpers and paving as necessary, remove water, etc., from parking and paved areas, and stripe/restripe parking areas as reasonably necessary for proper appearance.
- (iii) a. County shall promptly repair or correct any damage to its maintenance areas, as described in Section 5(i) and (iii), except damage arising from a willful or negligent act of City, its agents, employees or invitees.

b. In the event that City, its agents, employees or invitees willfully or negligently cause damage to County's maintenance areas, as described in Section 5(i) and (iii), City, with prior written approval of County, shall promptly repair or correct such damage.

c. If a condition exists on County's maintenance area, as described in Section 5(i) and (iii) which, in the opinion of City represents a hazard or threat to the public health or safety, City shall notify County in writing and request immediate repair or correction. Within ten (10) days of receipt of such request, County shall advise City, in writing, that County will immediately undertake the required repairs, or that County disputes the existence of a hazard or threat requiring immediate repair. In the event that County declines to make the requested repairs, City shall have the right, at its cost, and upon five (5) days written notice, to make the requested repairs. City may seek reimbursement of the cost of such repairs, in any manner authorized by law, on the grounds that the condition which was repaired constituted a threat to the public health or safety which required immediate action.
- (iv) a. City shall promptly repair or correct any damage to its maintenance areas, as described in Section 5(ii) and (iv), except damage arising from a willful or negligent act of County, its agents, employees or invitees.

b. In the event that County, its agents, employees or invitees willfully or negligently cause damage to City's maintenance areas, as described in Section 5(ii) and (iv), County, with prior written approval of City, shall promptly repair or correct such damage.

c. If a condition exists on City's maintenance areas, as described in Section 5(ii) and (iv) which, in the opinion of County represents a hazard or threat to the public health or safety, County shall notify City in writing and request immediate repair or correction. Within ten (10) days of receipt of such request, City shall advise County, in writing, that City will immediately undertake the required repairs, or that City disputes the existence of a hazard or threat requiring immediate repair. In the event that City declines to make the requested repairs, County shall have the right, at its cost, and upon five (5) days written notice, to make the requested repairs. County may seek reimbursement of the cost of such repairs, in any manner authorized by law, on the grounds that the condition which was repaired constituted a threat to the public health or safety which required immediate action.

7. Initial Term; Extension

- (i) Initial Term. The initial term of this Agreement shall commence upon the reference date first hereinabove written and continue in effect as long as both Parcels are used for community serving facilities, but in any event the initial term of the Agreement shall conclude thirty (30) years from the date first hereinabove written.
- (ii) Extension. Unless either party notifies the other in writing at least one (1) year prior to termination of the initial thirty (30) year term of its intent not to extend this Agreement, this Agreement shall automatically extend for a second thirty (30) year term.

8. Nature of Agreement

County hereby grants to City the right, privilege, permission and license to enter upon and occupy County's Parcel for the purpose of carrying out the specific provisions of this Agreement. City hereby grants to County the right, privilege, permission and license to enter upon and occupy City's Parcel for the purpose of carrying out the specific provisions of this Agreement. The licenses granted by County to City and by City to County shall be deemed irrevocable during the term hereof, as specified in Section 7 of this Agreement, on the grounds that each such license is coupled with an interest. This Agreement does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest by County or City.

9. Implementation of Agreement

Unless otherwise indicated in the Agreement, or as may be required by law, the City Manager shall be authorized, and is hereby directed, to carry out and implement the provisions of this Agreement on behalf of City, and the County Manager shall be authorized, and is hereby directed, to carry out and implement the provisions of this Agreement on behalf of the County.

10. Assignment

This Agreement is not transferable or assignable.

11. Reservations

This Agreement is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements, or licenses of any kind whatsoever as the same appear on record in the San Mateo County Recorder's Office, or in the other public records of the County. County and City covenant that the use of the Premises will at all times be conducted with proper regard for any party having rights, title, or privileges in the Parcels.

12. Taxes

The parties understand and agree that both Parcels constitute public property free and exempt from all taxation. The County and City shall, however, take whatever steps may be necessary upon written request therefor by the other party to contest any proposed tax or assessment, or to take steps necessary to recover any tax or assessment paid.

13. Laws and Regulations

County and City shall at all times maintain, occupy, and use the Parcels in compliance with all laws, rules, and regulations which may be applicable thereto.

14. Mutual Hold Harmless

- (i) It is agreed that County shall defend, hold harmless and indemnify City, its officers, agents and/or employees from any and all claims for injuries to persons and/or damage to property which arise

out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of County, its officers, agents and/or employees.

- (ii) It is further agreed that City shall defend, hold harmless and indemnify County, its officers, agents and/or employees from any and all claims for injuries to persons and/or damage to property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of City, its officers, agents and/or employees.
- (iii) In the event of the concurrent negligence of County, its officers, agents and/or employees, and City, its officers, agents and/or employees, then the liability for any and all claims for injuries or damages which arise out of the terms and conditions of this Agreement shall be apportioned under "California's Theory of Comparative Negligence" as presently established, or as may be hereafter modified.

15. Workers Compensation and Employer's Liability Insurance

During the entire term of this Agreement, County and City shall have in effect Workers' Compensation and Employer's Liability Insurance providing full statutory coverage for all its employees. In executing this Agreement, County and City make the following certification:

We are aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers' Compensation or (2) to undertake self-insurance in accordance with the provisions of the Code. We will comply with such provisions.

16. Recordation

Neither County nor City shall record this Agreement, except that if either party requests the other party to do so, the parties shall execute a short form memorandum hereof in recordable form.

17. Consent of the Parties

Whenever the consent, approval or permission of either party is required, that party shall not unreasonably delay or withhold such consent, approval or permission.

18. Termination for Default

Either party shall have the right to terminate this Agreement by written notice to the other party for any material default or material breach of any term, covenant or condition of this Agreement by the other party; provided, however, that the non-defaulting and non-breaching party must first deliver thirty (30) days' written notice to the other party of any such material default or material breach, and, if such material default or material breach exists for more than thirty (30) days after the receipt of such notice, the non-defaulting and non-breaching party may elect to terminate this Agreement. The non-defaulting and non-breaching party must act in good faith in declaring that a material default or material breach has occurred.

19. Termination

Except as may otherwise be provided in this Agreement, this Agreement may not be terminated except by mutual written agreement of County's Board of Supervisors and City's City Council.

20. Notices

Any notice, demand, request, consent, approval, waiver, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or

sent by prepaid mail, and if given by mail shall be deemed sufficiently given when sent by registered or certified mail. Any notice, demand, request, consent, approval, waiver, or communication that either party desires or is required to give by mail to the other party shall be addressed to the other party at the address set forth in Section 1 (Parties) of this Agreement. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this Section.

21. Severability

This Agreement shall be construed in accordance with the laws of the State of California. If any clause or provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision to make such illegal, invalid, or unenforceable clause or provision enforceable.

22. Entire Agreement

The foregoing constitutes the entire agreement between the parties and may be modified only by a writing executed by County's Board of Supervisors and City's City Council.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

COUNTY OF SAN MATEO

By: David Canepa
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

CITY OF REDWOOD CITY

By: Melissa Stevenson Diaz
Title: City Manager

Date:

ATTEST:

By: Pamela Aguilar
City Clerk

