

Recording requested by  
and return to:

Attention:  
Town of Atherton  
George Rodericks  
City Manager  
150 Watkins Avenue (Temporary Trailers)  
Atherton, CA 94027

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**LEASE AGREEMENT**

by and between

**TOWN OF ATHERTON**

and the

**COUNTY OF SAN MATEO**

Related to

\$1,350,000

**SAN MATEO COUNTY INTRA COUNTY LEASE PROGRAM**

Dated as of December 1, 2021

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THIS TRANSACTION IS EXEMPT FROM FILING FEES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 6103 AND  
TRANSFER TAXES PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 11928

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## LEASE AGREEMENT

This Lease Agreement, dated as of December 1, 2021 (this "Lease Agreement"), by and between the TOWN OF ATHERTON, a political subdivision organized and existing under and by virtue of the laws of the State of California (the "Borrower"), as lessor, and the COUNTY OF SAN MATEO, a political subdivision organized and existing under and by virtue of the laws of the State of California (the "County") as lessee;

### W I T N E S S E T H:

WHEREAS, the County intends to provide financial assistance to the Borrower by entering into this Lease Agreement and a Sublease, dated as of December 1, 2021 (the "Sublease") with the Borrower;

WHEREAS, the Borrower will lease to the County certain real property of the Borrower (the "Demised Premises") pursuant to this Lease Agreement, dated as of December 1, 2021;

WHEREAS, the Borrower will lease the Demised Premises from the County pursuant to the terms of the Sublease; and

WHEREAS, under this Lease Agreement, the County will be obligated to make a one-time up-front lease payment to the Borrower for the lease of the Demised Premises hereunder;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED as follows:

#### SECTION 1. Lease of Demised Premises

The Borrower hereby leases to the County and the County hereby hires from the Borrower, on the terms and conditions hereinafter set forth, the real property situated in the County of San Mateo, State of California, together with the improvements thereon, as described in Exhibit A attached hereto and made a part hereof, and any additional real property added thereto by any supplement or amendment hereto, or any real property substituted for all or any portion of such property in accordance with this Lease Agreement (the "Demised Premises"); subject, however, to any conditions, reservations, and easements of record or known to the Borrower and disclosed in writing to the County. No merger shall be effected by the Borrower's lease of the Demised Premises to the County under this Lease Agreement, and the County's sublease of the Demised Premises back to the Borrower under the Sublease.

#### SECTION 2. Term

The term of this Lease Agreement shall commence on the date of recordation of this Lease Agreement in the Office of the Recorder, County of San Mateo, State of California, or on December 1, 2021 whichever is earlier, and shall end on the date identified in Exhibit B hereto, unless such term is extended or sooner terminated as hereinafter provided. If on such date the Base Rental Payments and all other amounts then due under the Sublease shall not be fully paid, or if the rental or other amounts payable under the Sublease with respect to the Demised Premises shall have been abated at any time and for any reason, then the term of this Lease Agreement with

respect to such Demised Premises shall be extended until ten (10) days after the Base Rental Payments attributable to the Demised Premises and all other amounts then due under the Sublease, shall be fully paid, except that the term of this Lease Agreement shall in no event be extended beyond five (5) years after the date identified in Exhibit B hereto. If prior to such date the Base Rental Payments necessary to retire all amounts then due under the Sublease, shall be fully paid, the term of this Lease Agreement shall end ten (10) days thereafter or upon written notice by the Borrower to the County, whichever is earlier.

### SECTION 3. Rental

The County shall pay to the Borrower for rental hereunder an amount, not less than \$1,350,000, which amount the Borrower finds and determines is full and fair rental for the Demised Premises on the date hereof.

### SECTION 4. Environmental Law and Regulations

(a) Definitions used in this Section 4 and in Section 5.

“Asbestos Containing Materials” shall mean material in friable form containing more than one percent (1%) of the asbestiform varieties of (a) chrysotile (serpentine); (b) crocidolite (ricbeckite); (c) amosite (cummington-itegrinerite); (d) anthophyllite; (e) tremolite; and (f) antinolite.

“Environmental Regulations” shall mean all Laws and Regulations, now or hereafter in effect, with respect to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.) (together with the regulations promulgated thereunder, “CERCLA”), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) (together with the regulations promulgated thereunder, “RCRA”), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, et seq.) (together with the regulations promulgated thereunder, “Title III”), the Clean Water Act, as amended (33 U.S.C. Section 1251, et seq.) (together with the regulations promulgated thereunder, “CWA”), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) (together with the regulations promulgated thereunder, “CAA”), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.) (together with the regulations promulgated thereunder, “TSCA”), the Occupational Safety and Health Act, as amended (29 U.S.C. Section 651 et seq.) (together with regulations promulgated thereunder, “OSHA”) and any similar federal, state or local laws and regulations and any so-called local, state or federal “superfund” or “superlien” law.

“Hazardous Materials” shall mean any material amount of flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos or any Asbestos Containing Materials, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic, or regulated substances or related materials, as characterized, regulated or defined in CERCLA, RCRA, CWA, CAA, TSCA, OSHA and Title III, and the regulations promulgated pursuant thereto, and in any other Environmental Regulations applicable to the Borrower, any of the Demised Premises or the business operations conducted by the Borrower therein.

“Laws and Regulations” shall mean any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Demised Premises.

(b) No portion of the Demised Premises is located in an area of high potential incidence of radon which has an unventilated basement or subsurface portion which is occupied or used for any purpose other than the foundation or support of the improvements to such Demised Premises.

(c) The Borrower has not received any notice from any insurance company which has issued a policy with respect to the Demised Premises or from the applicable state or local government agency responsible for insurance standards (or any other body exercising similar functions) requiring the performance of any repairs, alterations or other work, which repairs, alterations or other work have not been completed at the Demised Premises. The Borrower has not received any notice of default or breach which has not been cured under any covenant, condition, restriction, right-of-way, reciprocal easement agreement or other easement affecting the Demised Premises which is to be performed or complied with by it.

#### SECTION 5. Environmental Compliance

(a) Neither the Borrower nor the County shall use or permit the Demised Premises or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the Demised Premises and then, only in compliance with all Environmental Regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the pumping, spilling, leaking, disposing of, emptying, discharging or releasing (hereinafter collectively referred to as “Release”) or threat of Release of Hazardous Materials on, from or beneath the Demised Premises or onto any other real property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of an office building, municipal corporation yard or public recreation facility, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any Release or threat of Release, or presence, of Hazardous Materials, the Borrower shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the County, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so Released or present, on, from or beneath the Demised Premises, in compliance with all Environmental Regulations. Notwithstanding anything to the contrary contained herein, underground storage tanks shall only be permitted subject to compliance with subsection (d) and only to the extent necessary to maintain the Demised Premises.

(b) The Borrower shall comply with, and shall cause its tenants, subtenants, licensees, guests, invitees, contractors, employees and agents to comply with, all Environmental Regulations, and shall keep the Demised Premises free and clear of any liens imposed pursuant

thereto (provided, however, that any such liens, if not discharged, may be bonded). The Borrower shall cause each tenant, and use its best efforts to cause all of such tenant's subtenants, agents, licensees, employees, contractors, guests and invitees and the guests and invitees of all of the foregoing to comply with all Environmental Regulations with respect to the Demised Premises; provided, however, that notwithstanding that a portion of this covenant is limited to the Borrower's use of its best efforts, the Borrower shall remain solely responsible for ensuring such compliance and such limitation shall not diminish or affect in any way the Borrower's obligations contained in subsection (c) hereof as provided in subsection (c) hereof.

(c) Irrespective of whether any representation or warranty contained in Section 4 is not true or correct, the Borrower shall, to the extent permitted by law, defend, indemnify and hold harmless the County, its employees, agents, officers, and supervisors from and against any claims, demands, penalties, fines, attorneys' fees (including, without limitation, attorneys' fees incurred to enforce the indemnification contained in this Section 5), consultants' fees, investigation and laboratory fees, liabilities, settlements (five (5) business days' prior notice of which the County, as appropriate, shall have delivered to the Borrower and the County), court costs, damages, losses, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to, (i) the presence, disposal, Release, threat of Release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Demised Premises, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached (five (5) Business Days' prior notice of which the County, shall have delivered to the Borrower), or governmental order relating to Hazardous Materials on, from or beneath any of the Demised Premises, (iv) any violation of Environmental Regulations or subsection (a) or (b) hereof by it or any of its agents, tenants, employees, contractors, licensees, guests, subtenants or invitees, and (v) the imposition of any governmental lien for the recovery of environmental cleanup or removal costs. To the extent that the Borrower is strictly liable under any Environmental Regulation, its obligation to the County and the other indemnitees under the foregoing indemnification shall likewise be without regard to fault on its part with respect to the violation of any Environmental Regulation which results in liability to any indemnitee. Its obligations and liabilities under this Section 5(c) shall survive any termination of the Sublease or exercise of any remedies thereunder.

(d) The Borrower shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, and shall maintain, repair, and replace such tanks only in accordance with Laws and Regulations, including but not limited to Environmental Regulations.

#### SECTION 6. Owner in Fee

The Borrower covenants that it is the owner in fee of the Demised Premises. The Borrower further covenants and agrees that if for any reason this covenant proves to be incorrect, the Borrower will either institute eminent domain proceedings to condemn the property or institute a quiet title action to clarify the Borrower's title, and will diligently pursue such action to completion. The Borrower further covenants and agrees that it will hold the County harmless from any loss, cost or damages resulting from any breach by the Borrower of the covenants contained in this Section. Not later than five (5) business days prior to the recordation of this Lease

Agreement, the Borrower agrees, at Borrower's sole expense, to provide the County with (a) 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 and insuring title to same; and (b) a fair market valuation of the Demised Premises and supporting documentation reasonably acceptable to the County.

#### SECTION 7. Assignments and Subleases

Unless the Borrower shall be in default under the Sublease, the County may not assign its rights under this Lease Agreement or sublet the Demised Premises, except pursuant to the Sublease, without the written consent of the Borrower, which consent may be withheld in the Borrower's sole and absolute discretion. Upon the occurrence of a default by the Borrower under the Sublease, the County may assign or sell its rights under this Lease Agreement or sublet the Demised Premises, without the consent of the Borrower.

#### SECTION 8. Right of Entry; Easements

The Borrower reserves the right for any of its duly authorized representatives to enter upon the Demised Premises at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

The Borrower agrees, upon written request from the County, to grant to the County a nonexclusive easement of ingress and egress for persons, vehicles and utilities, twenty (20) feet wide, from each parcel of the Demised Premises not having access to a public street, and appurtenant to such parcel, over property owned by the Borrower to a public street. The Borrower may, at any time, satisfy its obligation contained in the preceding sentence as to any such parcel of the Demised Premises by granting to the County an easement complying with the requirements of the preceding sentence from such parcel of the Demised Premises to a public street.

#### SECTION 9. Termination

The County agrees, upon the termination of this Lease Agreement or any substitution pursuant to Section 2.03 of the Sublease, to quit and surrender the Demised Premises and further agrees that the Demised Premises and any other permanent improvements and structures existing upon the Demised Premises at the time of the termination of this Lease Agreement or substitution of properties hereunder shall remain thereon and title thereto shall vest in the Borrower.

Upon the exercise of the option to prepay set forth in Section 7.02(c) of the Sublease and upon payment of the option price required by said section, the term of this Lease Agreement shall terminate as to the portion of the Demised Premises being so purchased, including the real property upon which portion is situated.

#### SECTION 10. Quiet Enjoyment

The County at all times during the term of this Lease Agreement, shall peaceably and quietly have, hold and enjoy all of the Demised Premises then leased hereunder.

#### SECTION 11. Waiver of Personal Liability

All liabilities under this Lease Agreement on the part of the County shall be solely liabilities of the County, as a public entity and agency, and the Borrower hereby releases each and every member, supervisor, officer, agent or employee of the County of and from any personal or individual liability under this Lease Agreement. No member, supervisor, officer, agent or employee of the County shall at any time or under any circumstances be individually or personally liable under this Lease Agreement to the Borrower or to any other party whomsoever for anything done or omitted to be done by the County hereunder.

The County and its members, supervisors, officers, agents, employees and assignees shall not be liable to the Borrower or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Demised Premises. The Borrower, to the extent permitted by law, shall indemnify and hold the County and its members, supervisors, officers, agents, employees and assignees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the operation of the Demised Premises, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Demised Premises regardless of responsibility for negligence, but excepting the active negligence of the person or entity seeking indemnity.

#### SECTION 12. Taxes

The Borrower covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Demised Premises.

#### SECTION 13. Eminent Domain

In the event the whole or any part of the Demised Premises is taken by eminent domain proceedings, the interest of the County shall be recognized and is hereby determined to be the amount of the then unpaid amounts due under the Sublease attributable to such part of the Demised Premises and shall be paid to the County, and the balance of the award, if any, shall be paid to the Borrower.

#### SECTION 14. Partial Invalidity

If any one or more of the terms, provisions, covenants or conditions of this Lease Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Lease Agreement shall be affected thereby, and each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### SECTION 15. Notices

All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and



shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered or certified mail, return receipt requested, postage prepaid, and, if to the Borrower, addressed to the Borrower in care of the George Rodericks, City Manager, Town of Atherton, 150 Watkins Avenue (Temporary Trailers), Atherton, CA 94027, or if to the County, addressed to the County in care of the Office of the County Manager/Clerk of the Board of Supervisors, 400 County Center, 1st Floor, Redwood City, California 94063-1663, with a copy to the Office of the County Counsel, 400 County Center, 6th Floor, Redwood City, California 94063-1663, or to such other addresses as the respective parties may from time to time designate by notice in writing.

#### SECTION 16. Section Headings

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

#### SECTION 17. Amendment

The County and the Borrower may at any time agree to the amendment of this Lease Agreement, which amendment shall be set forth in writing and signed by the County and the Borrower.

#### SECTION 18. Definitions

Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Sublease.

#### SECTION 19. Execution

This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease. It is also agreed that separate counterparts of this Lease Agreement may separately be executed by the Borrower and the County, all with the same force and effect as though the same counterpart had been executed by both the Borrower and the County.

#### SECTION 20. Integration

This Lease Agreement (together with the Sublease) is intended by the County and the Borrower to be the full and final expression of their agreement and shall not be contradicted by any prior written or oral agreement.

IN WITNESS WHEREOF, the Borrower and the County have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

TOWN OF ATHERTON,  
as Lessor

By \_\_\_\_\_  
George Rodericks  
City Manager

COUNTY OF SAN MATEO,  
as Lessee

By \_\_\_\_\_  
Michael Callagy  
County Manager

Approved as to Form:

By \_\_\_\_\_  
Mona G. Ebrahimi  
City Attorney  
Town of Atherton

## **EXHIBIT A**

### **Description of Demised Premises**

All that certain real property situated in the Town of Atherton, County of San Mateo, State of California, more particularly described as follows:

Holbrook-Palmer Park, 150 Watkins Avenue, Atherton, California, situated on the parcel described as follows:

Lots 5 and 6, as designated on the map entitled "Map of Villa Lots at Fair Oaks", which map was filed in the Office of the Recorder of the County of San Mateo, State of California, April 29, 1868, in Volume "C" of Maps Page 31 and a copy thereof entered in Volume 1 of Maps at Page 87.

Excepting therefrom so much thereof as may lie within the bounds of Watkins Avenue as same was conveyed by Charles Holbrook et al to the County of San Mateo by deed dated November 15, 1913 and recorded January 4, 1915 in Volume 237 of Deeds at Page 351, Records of San Mateo County, California.

APN: 061-310-100

**EXHIBIT B**

**Lease Term**

<u>Term</u>	<u>Maximum Extension</u>
December 1, 2021 to November 30, 2026	5 years

**CERTIFICATE OF ACCEPTANCE**  
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by the foregoing Lease from the Town of Atherton, a political subdivision of the State of California (the “Town”) to the County of San Mateo, a political subdivision of the State of California (the “County”), is hereby accepted by order of the Board of Supervisors of the County of San Mateo on \_\_\_\_\_, 2021 and the County consents to recordation thereof by its duly authorized officer.

COUNTY OF SAN MATEO,

[SEAL]

By \_\_\_\_\_  
Michael Callagy  
County Manager