



## Item No. 12 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**FROM: ROBERT OVADIA, PUBLIC WORKS DIRECTOR**

**DATE: JANUARY 20, 2021**

**SUBJECT: APPROVAL OF A MEMORANDUM OF UNDERSTANDING AND  
FINANCING AGREEMENTS WITH THE COUNTY OF SAN  
MATEO FOR FUNDING OF THE BAYFRONT CANAL /  
ATHERTON CHANNEL FLOOD PROTECTION AND  
RESTORATION PROJECT**

### **RECOMMENDATION**

Authorize the City Manager to execute a Memorandum of Understanding and lease and sublease financing agreements with the County of San Mateo for funding of the Bayfront Canal/Atherton Channel Flood Protection and Restoration Project.

### **BACKGROUND**

The City Council, at its October 21, 2020 meeting, approved a Memorandum of Understanding (MOU) with the San Mateo County Flood and Sea Level Rise Resiliency District, City of Redwood City, City of Menlo Park and the County of San Mateo to fund the proposed Bayfront Canal / Atherton Channel Flood Protection and Restoration Project, including remaining pre-construction activities, construction of the project, implementation of mitigation measures, mitigation monitoring and operation and maintenance activities. The Town's contribution for the MOU is capped at \$1,350,000. As the Town does not currently have the funding available for the project, the County of San Mateo had agreed to assist the Town in financing its share of the project costs via a lease and sublease agreement. The Council's authorization to execute the MOU contingent upon the approval of a financing agreement with the County of San Mateo.

### **ANALYSIS**

As noted above, the County of San Mateo has agreed to finance the Town's contribution to the Bayfront Canal/Atherton Channel Flood Protection and Restoration Project via a lease/sublease agreement.

The City Attorney negotiated a Memorandum of Understanding (MOU) with the County of San Mateo establishing the terms and conditions associated with a Lease and Sublease agreement to

provide funding for the funding of the Bayfront Canal/Atherton Channel Flood Protection and Restoration Project. Holbrook-Palmer Park will serve as the collateralized asset for the lease/sublease agreement. As Holbrook-Palmer Park is currently encumbered as a collateralized asset for the Certificate of Participation (COP) funding the Town Center project, it cannot be used until released from the COP. It is anticipated that the Holbrook-Palmer Park will be released from the COP upon completion of the Town Center project, anticipated prior to December 1, 2021. The County has agreed to defer the start date of the agreement until the assets are released, anticipated December 1, 2021.

The MOU provides a guarantee to the Town that it will have funds available to support its share of costs associated with the construction of the Bayfront Canal/Atherton Channel Flood Protection and Restoration Project and will allow the Town to execute the Memorandum of Understanding with the collaborating agencies related to the construction and maintenance of the project.

The following terms are outlined in the agreements:

Loan Amount:	\$1,350,000
Interest Rate:	2% per annum
Term:	5 years (December 1, 2021 to November 30, 2026)
Lease Date:	December 1, 2021
Rental Payment Beginning:	December 1, 2021
Payment Schedule:	Biannual (April 15 and December 15)
Payment:	\$148,500
Demised Premises:	Holbrook-Palmer Park
Demised Premises valuation:	\$7,500,000
Reserve Requirement:	\$130,000
Prepayment Penalty:	None
Maximum Extension:	5 years

Execution of the Lease and Sublease agreement with the County of San Mateo will be held until Holbrook-Palmer Park is released from the COP.

### **POLICY FOCUS**

The financing agreement is consistent with the policy direction provided by the City Council regarding the Bayfront Canal / Atherton Channel Flood Protection and Restoration project.

### **FISCAL IMPACT**

The Town's total financial commitment to the Bayfront Canal / Atherton Channel Flood Protection and Restoration project is \$1,350,000. Funding for the project would be provided through this financing agreement with the County of San Mateo, which would be paid back in installments directly from property tax receipts. The total cost of debt, if not prepaid would be \$1,485,000.

**PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

**COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_ has or  X  has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)
- Tree Committee (meets each month)

**ATTACHMENT**

1. MOU with the County of San Mateo, with Term Sheet
2. Lease Agreement
3. Sublease Agreement

**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](mailto: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](mailto: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: \_\_\_\_\_

George Rodericks  
City Manager

# EXHIBIT

# A

(Rev. 1-12-21)

## SAN MATEO COUNTY LEASE PROGRAM

TERM SHEET

<b>Term</b>	5 years
<b>“BORROWER”</b>	Town of Atherton
<b>Borrower’s Organic Act Authorizing Lease</b>	Govt Code 37380(a)
<b>“LOAN AMOUNT”</b>	\$1,350,000
<b>Interest Rate</b>	2% per annum, fixed rate
<b>“DATED DATE”</b>	December 1, 2021
<b>“DEMISED PREMISES”</b>	Holbrook-Palmer Park, 150 Watkins Avenue, Atherton, CA 94027
<b>Valuation of Demised Premises</b>	\$7,500,000
<b>“RENTAL PAYMENT BEGINNING” (Date first rental payment begins)</b>	December 1, 2021
<b>“RENTAL PAYMENT END” (End of first rental payment period – generally 1 year after period begins)</b>	November 30, 2022
<b>“RESERVE REQUIREMENT”</b>	\$130,000
<b>Lease Term</b>	December 1, 2021 to November 30, 2026
<b>Maximum Extension Past Lease Term</b>	5 years
<b>Base Rental Payment Schedule</b>	Due April 15 and December 15 in the amounts set forth on Exhibit B to Sublease
<b>Demised Premises Legal Description</b>	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:

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

Recording requested by  
and return to:

COUNTY OF SAN MATEO  
Michael Callagy  
County Manager  
400 County Center Drive  
Redwood City, CA 94063

---

**SUBLEASE**

by and between

**COUNTY OF SAN MATEO**

and the

**TOWN OF ATHERTON**

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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SUBLEASE

This Sublease, dated as of December 1, 2021, by and between the COUNTY OF SAN MATEO (the “County”), a county duly organized and existing under and by virtue of the laws of the State of California, as sublessor, and the TOWN OF ATHERTON (the “Borrower”), a political subdivision of the State of California, as sublessee;

WITNESSETH:

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

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

WHEREAS, under this Sublease, the Borrower will be obligated to make Base Rental Payments to the County for the lease of the Demised Premises hereunder;

NOW, THEREFORE, in consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions.

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

“**Additional Payments**” means all amounts payable to the County or any other person from the Borrower as Additional Payments pursuant to Section 3.02 hereof.

“**Controller**” means the Controller of the County of San Mateo.

“**County**” means the County of San Mateo, acting as sublessor hereunder and any surviving, resulting or transferee entity.

“**Base Rental**” and “**Base Rental Payments**” mean all amounts payable to the County from the Borrower as Base Rental Payments pursuant to Section 3.01 hereof.

“**Base Rental Payment Schedule**” means the schedule of Base Rental Payments payable to the County from the Borrower pursuant to Section 3.01 hereof and attached hereto as Exhibit B.

“**Borrower**” means the Town of Atherton, a body corporate and politic and a political subdivision of the State of California organized and validly existing under the Constitution and general laws of the State.

“**Demised Premises**” means that certain real property situated in the County, described in Exhibit A attached hereto and made a part hereof, together with any improvements thereon, and additional real property added thereto by any supplement or amendment hereto, or any real property substituted for all or any portion of the Demised Premises in accordance with this Sublease; subject, however, to any conditions, reservations and easements of record or known to the Borrower.

“**Event of Default**” shall have the meaning specified in Section 6.01 hereof.

“**Lease Agreement**” means the Lease Agreement, dated as of December 1, 2021, by and between the Town of Atherton and the County, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof.

“**Rental**” and “**Rentals**” mean Base Rentals and Additional Payments and any other amounts due hereunder.

“**Rental Payment Period**” means the twelve-month period commencing December 1 of each year and ending the following November 30, and the initial period commencing on the effective date hereof and ending on November 30, 2022.

“**Sublease**” means this Sublease, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof and of the Trust Agreement.

“**Substitute Property**” shall have the meaning specified in Section 2.03 hereof.

## ARTICLE II

### LEASE OF DEMISED PREMISES; TERM

#### SECTION 2.01. Lease of Demised Premises.

The County hereby leases to the Borrower, and the Borrower hereby leases from the County, the Demised Premises, subject, however, to all easements, encumbrances, and restrictions that exist at the time of the commencement of the term of this Sublease, as defined in Section 2.02 hereof. The Borrower hereby agrees and covenants during the term of this Sublease that, except as hereinafter provided, it will use the Demised Premises for public and municipal purposes so as to afford the public the benefits contemplated by this Sublease.

SECTION 2.02. [Term; Occupancy; Construction.](#)

(a) The term of this Sublease shall commence on the date of recordation of this Sublease in the office of the County Recorder of San Mateo County, State of California, or on December 1, 2021, whichever is earlier, and shall end on the date specified in [Exhibit C](#) 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 hereunder with respect to the Demised Premises, shall not be fully paid, or if the rental payable hereunder shall have been abated at any time and for any reason, then the term of this Sublease with respect to the Demised Premises shall be extended until all Base Rental Payments attributable to the Demised Premises and all other amounts then due hereunder with respect to the Demised Premises, shall be fully paid, except that the term of this Sublease shall in no event be extended beyond the maximum extension date identified in [Exhibit C](#) hereto. If prior to such date, the Base Rental Payments and all other amounts then due hereunder, shall be fully paid, or provision therefor made, the term of this Sublease shall end ten (10) days thereafter or upon written notice by the Borrower to the County, whichever is earlier.

(b) [Occupancy of Demised Premises.](#) The Borrower Represents to the County that it has use and occupancy of the Demised Premises.

(c) [Reserve Requirement.](#) The Borrower agrees to hold and maintain for the benefit of the County during the term of this Sublease a reserve fund, which shall have on deposit at any time no less than \$130,000, and which the Borrower shall grant a pledge of and lien on to the County.

SECTION 2.03. [Substitution.](#)

The Borrower may, with the advance written consent of the County, and with such policies of insurance, reports, certificates, opinions and other documents as the County may reasonably require, substitute real property of equal or greater value and essentiality (in the sole determination of the County) to the operations of the Borrower, for all or for part of the Demised Premises for purposes of this Sublease (“Substitute Property”).

**ARTICLE III**

**[RENTAL PAYMENTS; USE OF PROCEEDS](#)**

SECTION 3.01. [Base Rental Payments.](#)

The Borrower agrees to pay to the County, as Base Rental Payments for the use and occupancy of the Demised Premises (subject to the provisions of Sections 3.04, 3.06 and 7.01 of this Sublease) annual rental payments in accordance with the Base Rental Payment Schedule attached hereto as Exhibit B and made a part hereof. Base Rental Payments shall be calculated on an annual basis, for the twelve-month periods commencing on December 1, 2021 and ending on November 30, 2026, except that the first Rental Payment Period shall commence on the date of recordation of this Sublease or on December 1, 2021, whichever is later, and shall end on November 30, 2022. Base Rental Payments will be due to the County in two installments payable

(as further described below) on December 15 and April 15 of each year (the period from December 15 to April 14 and from April 15 to December 14 each a “Base Rental Payment Installment Period”), commencing April 15, 2022. The amount due will include interest calculated at the rate of 2% per annum such that each Base Rental Payment set forth on the Base Rental Payment Schedule attached hereto as Exhibit B comprises a principal component and an interest component. Each Base Rental Payment shall be for the use of the Demised Premises for a portion of each single twelve month period.

If the term of this Sublease shall have been extended pursuant to Section 2.02 hereof, Base Rental Payment installments shall continue to be due on the same Rental Payment Date in each year, and payable prior thereto as hereinabove described, continuing to and including the date of termination of this Sublease. Upon such extension of this Sublease, the Borrower shall deliver to the County a Certificate setting forth the extended rental payment schedule, which schedule shall establish the Base Rental Payments at amounts not exceeding maximum annual Base Rental payable hereunder.

The Borrower shall make Base Rental Payments directly from its property tax apportionments in two installments per fiscal year until all amounts due under this Sublease shall be paid. The Controller shall pay, and the Borrower hereby specifically authorizes the Controller to pay, the amounts owed by the Borrower to the County from the Borrower’s secured property tax revenues that would otherwise be payable by the Controller to the Borrower on December 15<sup>th</sup> and April 15<sup>th</sup> of each year. The Controller shall make such payments to the County prior to making any other payments to the Borrower. In the event that there are insufficient property tax revenues due to the Borrower on any given December 15<sup>th</sup> or April 15<sup>th</sup>, the Controller shall take any remaining amounts due (and the Borrower hereby authorizes the Controller to take) from any other available tax apportionments otherwise due to the Borrower. In the event there are insufficient tax proceeds to pay the full amounts due to the County on any December 15<sup>th</sup> or April 15<sup>th</sup>, the Borrower shall remain responsible for payment of, and shall promptly pay to the County, such remaining amounts as may then be due.

SECTION 3.02. [Additional Payments.](#)

The Borrower shall also pay such amounts (herein called the “Additional Payments”) as shall be required by the County for the payment of all costs and expenses incurred by the County in connection with the execution, performance or enforcement of this Sublease, its interest in the Demised Premises and the lease of the Demised Premises to the Borrower, including but not limited to payment of all fees, costs and expenses and all administrative costs of the County related to the Demised Premises, including, without limiting the generality of the foregoing, salaries and wages of employees, all expenses, compensation and indemnification of the County, fees of auditors, accountants, and attorneys or architects.

Such Additional Payments shall be billed to the Borrower by the County from time to time, together with a statement certifying that the amount billed has been paid by the County for one or more of the items above described, or that such amount is then payable by the County for such items. Amounts so billed shall be paid by the Borrower to the County within 30 days after receipt of the bill by the Borrower. The Borrower reserves the right to audit billings for

Additional Payments although exercise of such right shall in no way affect the duty of the Borrower to make full and timely payment for all Additional Payments.

SECTION 3.03. [Fair Rental Value.](#)

Such payments of Base Rental Payments and Additional Payments for each rental period during the term of this Sublease shall constitute the total rental for said Rental Payment Period and shall be paid by the Borrower in each Rental Payment Period for and in consideration of the right of use and occupancy of, and continued quiet use and enjoyment of, Demised Premises during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental payable for each Rental Payment Period represents the fair rental value of the Demised Premises for each such period. In making such determination, consideration has been given to the value of the Demised Premises, costs of acquisition, design, construction and financing of the Demised Premises, other obligations of the parties under this Sublease, the uses and purposes which may be served by the Demised Premises and the benefits therefrom which will accrue to the Borrower and the general public.

SECTION 3.04. [Payment Provisions.](#)

Each installment of rental payable hereunder shall be paid in lawful money of the United States of America to the County at the office of the Treasurer of the County, or such other place as the County shall designate. Any such installment of rental accruing hereunder which shall not be paid when due and payable under the terms of this Sublease shall bear interest at the rate of twelve percent (12%) per annum, or such lesser rate of interest as may be required by law, from the date when the same is due hereunder until the same shall be paid. Notwithstanding any dispute between the County and the Borrower, the Borrower shall make all rental payments when due without deduction or offset of any kind and shall not withhold any rental payments pending the final resolution of such dispute. In the event of a determination that the Borrower was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent rental payments due hereunder or refunded at the time of such determination.

Rental is subject to abatement as provided in Section 3.06.

SECTION 3.05. [Appropriations Covenant.](#)

The Borrower covenants to take such action as may be necessary to include all such Base Rental Payments and Additional Payments due hereunder in its annual budgets, to make necessary annual appropriations for all such Base Rental Payments and Additional Payments as shall be required to provide funds in such year for such Base Rental Payments and Additional Payments. The covenants on the part of the Borrower herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Borrower to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Borrower to carry out and perform the covenants and agreements in this Sublease agreed to be carried out and performed by the Borrower.

The County and the Borrower understand and intend that the obligation of the Borrower to pay Base Rental Payments and Additional Payments hereunder shall constitute a current expense of the Borrower and shall not in any way be construed to be a debt of the Borrower in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the Borrower, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the Borrower. Base Rental Payments and Additional Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise legally available for the purpose of paying Base Rental Payments and Additional Payments or other payments due hereunder as consideration for use of the Demised Premises. This Sublease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The Borrower has not pledged the full faith and credit of the Borrower, the State of California or any agency or department thereof to the payment of the Base Rental Payments and Additional Payments or any other payments due hereunder.

SECTION 3.06. [Rental Abatement.](#)

The Base Rental Payments and Additional Payments shall be abated proportionately, during any period in which by reason of any damage or destruction or defect in title (other than by condemnation which is hereinafter provided for) there is substantial interference with the use and occupancy of the Demised Premises by the Borrower, in the proportion in which the cost of that portion of the Demised Premises rendered unusable bears to the cost of the whole of the Demised Premises. Such abatement shall continue for the period commencing with such damage or destruction or defect in title and ending with the substantial completion of the work of repair or reconstruction or resolution of the defect. In the event of any such damage, destruction or defect, this Sublease shall continue in full force and effect and shall be extended pursuant to Section 2.02 hereof, and the Borrower waives the benefits of California Civil Code Section 1932(2) and 1933(4) and of Title 11 of the United States Code, Section 365(h) and any and all other rights to terminate this Sublease by virtue of any such damage, destruction or defect. Base Rental Payments by the Borrower shall commence upon use and occupancy of the Demised Premises as provided in Section 2.02(b).

**ARTICLE IV**

**[MAINTENANCE; ALTERATIONS AND ADDITIONS](#)**

SECTION 4.01. [Maintenance and Utilities.](#)

During such time as the Borrower is in possession of the Demised Premises, all maintenance and repair, both ordinary and extraordinary, of the Demised Premises shall be the responsibility of the Borrower, which shall at all times maintain or otherwise arrange for the maintenance of the Demised Premises in good condition, and the Borrower shall pay for or otherwise arrange for the payment of all utility services supplied to the Demised Premises, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Demised Premises resulting from ordinary wear and tear or want of care on the part of the Borrower or any assignee or sublessee thereof or any other cause and shall pay for or otherwise arrange for the payment of all insurance

policies required to be maintained with respect to the Demised Premises. In exchange for the rental herein provided, the County agrees to provide only the Demised Premises. The Borrower waives the benefits of subsections 1 and 2 of Section 1932 and Section 1933(4) of the California Civil Code, but such waiver does not limit any of the rights of the Borrower under the terms of this Sublease.

In the event the Borrower shall fail to keep the Demised Premises in good repair and working order or shall fail to maintain any insurance required hereunder, the County may, but shall be under no obligation to, maintain and repair the Demised Premises or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by the County shall constitute Additional Payments hereunder, and the Borrower covenants and agrees to pay such amounts so advanced by the County with interest thereon from the date advanced until paid as provided in Section 3.04.

SECTION 4.02. [Changes to the Demised Premises.](#)

Subject to Section 8.02 hereof, the Borrower shall, at its own expense, have the right to remodel the Demised Premises or to make additions, modifications and improvements to the Demised Premises, provided that no such additions, modifications, or improvements to the Demised Premises shall cause the rental payments due under this Sublease to be abated. All such additions, modifications and improvements shall thereafter comprise part of the Demised Premises and be subject to the provisions of this Sublease. Such additions, modifications and improvements shall not in any way damage the Demised Premises or cause them to be used for purposes other than those authorized under the provisions of state and federal law; and the Demised Premises, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Demised Premises immediately prior to the making of such additions, modifications and improvements.

SECTION 4.03. [Installation of Borrower's Equipment.](#)

The Borrower and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Demised Premises. All such items shall remain the sole property of such party, in which the County shall not have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Demised Premises resulting from the installation, modification or removal of any such items. Nothing in this Sublease shall prevent the Borrower from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Demised Premises.

**ARTICLE V**

**INSURANCE**

SECTION 5.01. [Fire and Extended Coverage Insurance.](#)

The Borrower shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, insurance against loss or damage to any structures constituting any part of the Demised Premises by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance and sprinkler system leakage insurance. Earthquake insurance, if any, will be provided at the discretion of the Borrower. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the Demised Premises, excluding the cost of excavations, of grading and filling, and of the land (except that such insurance may be subject to deductible clauses for any one loss of not to exceed \$500,000 or comparable amount adjusted for inflation), or in the alternative, shall be in an amount and in a form sufficient, in the event of total or partial loss, to enable the Borrower to prepay the Base Rental Payments then unpaid, pursuant to Section 7.02 hereof.

In the event of any damage to or destruction of any part of the Demised Premises, caused by the perils covered by such insurance, the Borrower, except as hereinafter provided, shall cause the proceeds of such insurance to be utilized for the repair, reconstruction or replacement of the damaged or destroyed portion of the Demised Premises, and the Borrower shall hold said proceeds separate and apart from all other funds, in a special fund to be designated the "Insurance and Condemnation Fund," to the end that such proceeds shall be applied to the repair, reconstruction or replacement of the Demised Premises to at least the same good order, repair and condition as they were in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds. None of said proceeds shall be withdrawn without the express prior written consent of the County. The County shall permit withdrawals of said proceeds from time to time upon receiving the written request of the Borrower, stating that the Borrower has expended moneys or incurred liabilities in an amount equal to the amount therein requested to be paid over to it for the purpose of repair, reconstruction or replacement, and specifying the items for which such moneys were expended, or such liabilities were incurred. Any balance of said proceeds not required for such repair, reconstruction or replacement shall be treated by the County as Base Rental Payments. Alternatively, the Borrower, with the written consent of the County, may elect not to repair, reconstruct or replace the damaged or destroyed portion of the Demised Premises and thereupon shall cause said proceeds to be used for the prepayment of the Base Rental Payments.

The Borrower shall promptly apply for federal disaster aid or State of California disaster aid in the event that the Demised Premises are damaged or destroyed as a result of an earthquake occurring at any time. Any proceeds received as a result of such disaster aid shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Demised Premises, or, at the option of the Borrower with the Consent of the County, to enable the Borrower to prepay the Base Rental Payments if such use of such disaster aid is permitted.

SECTION 5.02. [Liability Insurance.](#)

Except as hereinafter provided, the Borrower shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, a standard comprehensive general liability insurance policy or policies in protection of the County and its

members, supervisors, officers, agents and employees and the County, insuring said parties against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the operation of the Demised Premises, with minimum liability limits of \$1,000,000 per occurrence and \$3,000,000. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks in aggregate. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance carried by the Borrower.

SECTION 5.03. [Rental Interruption or Use and Occupancy Insurance.](#)

The Borrower shall procure or cause to be procured and maintain or cause to be maintained, rental interruption or use and occupancy insurance to cover loss, total or partial, of the rental income from or the use of the Demised Premises as the result of any of the hazards covered by the insurance required by Section 5.01 hereof in an amount at least equal to the maximum Base Rental Payments coming due and payable during any two consecutive Fiscal Years during the remaining term of this Sublease, except that such insurance may be subject to a deductible clause of not to exceed five hundred thousand dollars (\$500,000) or a comparable amount adjusted for inflation. Any proceeds of such insurance shall be used to reimburse to the Borrower any rental theretofore paid by the Borrower under this Sublease attributable to such structure for a period of time during which the payment of rental under this Sublease is abated, and any proceeds of such insurance not so used shall be applied as provided in Section 3.01 (to the extent required for the payment of Base Rental) and in Section 3.02 (to the extent required for the payment of Additional Payments). The Borrower shall not be entitled to self-insure for rental interruption insurance.

SECTION 5.04. [Worker's Compensation.](#)

The Borrower shall also maintain worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure its employees against liability for compensation under the California Labor Code, as applicable to Counties, or any act hereafter enacted as an amendment or supplement thereto. As an alternative, such insurance may be maintained as part of or in conjunction with any other insurance carried by the Borrower.

SECTION 5.05. [Insurance Proceeds; Form of Policies.](#)

All policies of insurance from third-party carriers required by Section 5.02 shall name the Borrower, and the County as insured. All policies of insurance from third-party carriers required by Section 5.01 shall contain a lender's loss payable endorsement in favor of the County substantially in accordance with the form approved by the Insurance Services Office and the California Bankers Association. The County shall, to the extent practicable, collect, adjust and receive all moneys which may become due and payable under the policies obtained pursuant to Sections 5.01 and 5.03 and shall apply the proceeds of such insurance as provided in Sections 5.01 and 5.03. All policies of insurance required by this Sublease shall provide that the County shall be given thirty (30) days notice of each expiration thereof or any intended cancellation thereof or reduction of the coverage provided thereby. The County shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Borrower.

The Borrower shall pay when due the premiums for all insurance policies required by this Sublease.

SECTION 5.06. [Annual Certificates.](#)

The Borrower will deliver to the County no later than September 15 in each year a written Certificate of an officer of the Borrower stating whether such policies satisfy the requirements of this Sublease, setting forth the insurance policies then in force pursuant to this Article, the names of the insurers which have issued the policies, the amounts thereof and the property and risks covered thereby, and, if any self-insurance program is being provided, the annual report of an actuary, independent insurance consultant or other qualified person containing the information required for such self-insurance program and described in Sections 5.01, 5.02 and 5.04. Delivery to the County of the certificate under the provisions of this Section shall not confer responsibility upon the County as to the sufficiency of coverage or amounts of such policies. If so requested in writing by the County, the Borrower shall also deliver to the certificates or duplicate originals or certified copies of each insurance policy described in such schedule.

Any policies of insurance provided by a commercial insurer to satisfy the requirements of Sections 5.01, 5.02 or 5.03 hereof shall be provided by a commercial insurer rated A- or better by AM Best Rating.

**ARTICLE VI**

**DEFAULTS AND REMEDIES**

SECTION 6.01. [Defaults and Remedies.](#)

(a) If (i) the Borrower shall fail to pay any rental payable hereunder when the same becomes due, time being expressly declared to be of the essence of this Sublease or (ii) the Borrower shall fail to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the Borrower (other than as referred to in (i) for a period of sixty (60) days after notice of the same has been given to the Borrower by the County (or if the Borrower notifies the County and the County that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60 day period, the failure will not constitute an Event of Default if the Borrower commences to cure the failure within such 60 day period and thereafter diligently and in good faith cures such failure in a reasonable period of time), or upon the happening of any of the events specified in subsection (b) of this Section (any such case above being an “Event of Default”), the Borrower shall be deemed to be in default hereunder and it shall be lawful for the County to exercise any and all remedies available pursuant to law or granted pursuant to this Sublease. Upon any such default, the County, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Sublease in the manner hereinafter provided on account of default by the Borrower, notwithstanding any re-entry or re-letting of the Demised Premises as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Demised Premises and, to the extent permitted by law, remove all persons in possession thereof and all personal property whatsoever situated upon the Demised Premises and place such personal

property in storage in any warehouse or other suitable place located within the County of San Mateo, California. In the event of such termination, the Borrower agrees to surrender immediately possession of the Demised Premises, without let or hindrance, and to pay the County all damages recoverable at law that the County may incur by reason of default by the Borrower, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Demised Premises and removal and storage of such property by the County or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Demised Premises given pursuant to law nor any entry or re-entry by the County nor any proceeding in unlawful detainer, or otherwise, brought by the County for the purpose of effecting such re-entry or obtaining possession of the Demised Premises nor the appointment of a receiver upon initiative of the County to protect the County's interest under this Sublease shall of itself operate to terminate this Sublease, and no termination of this Sublease on account of default by the Borrower shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the County shall have given written notice to the Borrower of the election on the part of the County to terminate this Sublease. The Borrower covenants and agrees that no surrender of the Demised Premises or of the remainder of the term hereof or any termination of this Sublease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the County by such written notice.

(2) Without terminating this Sublease, (i) to collect each installment of rent as it becomes due and enforce any other terms or provision hereof to be kept or performed by the Borrower, regardless of whether or not the Borrower has abandoned the Demised Premises, or (ii) to exercise any and all rights of entry and re-entry upon the Demised Premises. In the event the County does not elect to terminate this Sublease in the manner provided for in subparagraph (1) hereof, the Borrower shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the Borrower and, if the Demised Premises are not re-let, to pay the full amount of the rent to the end of the term of this Sublease or, in the event that the Demised Premises are re-let, to pay any deficiency in rent that results therefrom; and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the County may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified, and notwithstanding any entry or re-entry by the County or suit in unlawful detainer, or otherwise, brought by the County for the purpose of effecting such entry or re-entry or obtaining possession of the Demised Premises. Should the County elect to enter or re-enter as herein provided, the Borrower hereby irrevocably appoints the County as the agent and attorney-in-fact of the Borrower to re-let the Demised Premises, or any part thereof, from time to time, either in the County's name or otherwise, upon such terms and conditions and for such use and period as the County may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Demised Premises and to place such personal property in storage in any warehouse or other suitable place located in the County of San Mateo, California, for, to the extent permitted by law, the account of and at the expense of the Borrower, and the Borrower, to the extent permitted by law, hereby exempts and agrees to save harmless the County from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Demised Premises and removal and storage of such property by the County or its duly authorized agents in accordance with the provisions herein contained. The Borrower agrees that the terms of this Sublease constitute full and sufficient notice of the right of the County to re-let

the Demised Premises and to do all other acts to maintain or preserve the Demised Premises as the County deems necessary or desirable in the event of such re-entry without effecting a surrender of this Sublease, and further agrees that no acts of the County in effecting such re-letting shall constitute a surrender or termination of this Sublease irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the Borrower the right to terminate this Sublease shall vest in the County to be effected in the sole and exclusive manner provided for in sub-paragraph (1) hereof. The Borrower further waives the right to any rental obtained by the County in excess of the rental herein specified and hereby conveys and releases such excess to the County as compensation to the County for its services in re-letting the Demised Premises or any part thereof. The Borrower further agrees, to the extent permitted by law, to pay the County the reasonable cost of any alterations or additions to the Demised Premises necessary to place the Demised Premises in condition for re-letting immediately upon notice to the Borrower of the completion and installation of such additions or alterations.

The Borrower hereby waives any and all claims for damages caused or which may be caused by the County in re-entering and taking possession of the Demised Premises as herein provided and all claims for damages that may result from the destruction of or injury to the Demised Premises and all claims for damages to or loss of any property belonging to the Borrower, or any other person, that may be in or upon the Demised Premises.

(b) If (i) the Borrower's interest in this Sublease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the County, as hereinafter provided for; or (ii) the Borrower or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the Borrower asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the Borrower's debts or obligations, or offers to the Borrower's creditors to effect a composition or extension of time to pay the Borrower's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the Borrower's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the Borrower, or if a receiver of the business or of the property or assets of the Borrower shall be appointed by any court, except a receiver appointed at the instance or request of the County, or if the Borrower shall make a general or any assignment for the benefit of the Borrower's creditors; or (iii) the Borrower shall abandon or vacate the Demised Premises, then the Borrower shall be deemed to be in default hereunder.

(c) The County shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the County shall have failed to perform such obligations within sixty (60) days or such additional time as is reasonably required to correct any such default after notice by the Borrower to the County properly specifying wherein the County has failed to perform any such obligation. In the event of default by the County, the Borrower shall be entitled to pursue any remedy provided by law.

(d) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default as described in this Section, the County shall be entitled to

proceed to protect and enforce the rights vested in the County by this Sublease and under the Lease Agreement or by law or by equity. The provisions of this Sublease and the duties of the Borrower and of its trustees, officers or employees shall be enforceable by the County by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the County shall have the right to bring the following actions:

(1) Accounting. By action or suit in equity to require the Borrower and its trustees, officers and employees and its assigns to account as the trustee of an express trust.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the County.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the County's rights against the Borrower (and its board, officers and employees) and to compel the Borrower to perform and carry out its duties and obligations under the law and its covenants and agreements with the Borrower as provided herein.

The exercise of any rights or remedies under this Sublease shall not permit acceleration of Base Rental Payments.

Each and all of the remedies given to the County hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the County to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the County of the Demised Premises. If any statute or rule of law validly shall limit the remedies given to the County hereunder, the County nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the County shall prevail in any action brought to enforce any of the terms and provisions of this Sublease, the Borrower agrees to pay a reasonable amount as and for attorney's fees incurred by the County in attempting to enforce any of the remedies available to the County hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

SECTION 6.02. Waiver.

Failure of the County to take advantage of any default on the part of the Borrower shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the County to insist upon performance by the Borrower of any term, covenant or condition hereof, or to exercise any rights given the County on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Sublease.

## ARTICLE VII

## EMINENT DOMAIN; PREPAYMENT

SECTION 7.01. Eminent Domain.

If the whole of the Demised Premises or so much thereof as to render the remainder unusable for the purposes for which it was used by the Borrower shall be taken under the power of eminent domain, the term of this Sublease shall cease as of the day that possession shall be so taken. If less than the whole of the Demised Premises shall be taken under the power of eminent domain and the remainder is usable for the purposes for which it was used by the Borrower at the time of such taking, then this Sublease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the rental due hereunder in an amount equivalent to the amount by which the total upfront rental paid under the Lease Agreement will be reduced by the application of the award in eminent domain to the prepayment of the Base Rental Payments. Any award made in eminent domain proceedings for taking the Demised Premises or any portion thereof shall be paid to the County and applied to the prepayment of the Base Rental Payments as provided in Section 7.02. Any such award made after all of the Base Rental Payments and Additional Payments have been fully paid, or provision therefor made, shall be paid to the to the Borrower.

SECTION 7.02. Prepayment.

(a) The Borrower shall prepay then unpaid Base Rental Payments from insurance (including proceeds of title insurance) and eminent domain proceeds, to the extent provided in Sections 5.01 and 7.01 hereof (provided, however, that in the event of partial damage to or destruction of the Demised Premises caused by perils covered by insurance, if in the judgment of the County the insurance proceeds are sufficient to repair, reconstruct or replace the damaged or destroyed portion of the Demised Premises, such proceeds shall be held by the County and used to repair, reconstruct or replace the damaged or destroyed portion of the Demised Premises, pursuant to the procedure set forth in Section 5.01 for proceeds of insurance).

(b) Before making any prepayment pursuant to this article, the Borrower shall, within five (5) days following the event creating such right or obligation to prepay, give written notice to the County describing such event and specifying the date on which the prepayment will be made, which date shall be not less than forty-five (45) days from the date such notice is given.

(c) The Borrower may prepay this sublease from any legally available source of funds at any time. The Borrower shall give written notice to the County specifying the date on which the prepayment will be made at least five (5) days before making such prepayment.

SECTION 7.03. Sale of Personal Property.

The Borrower, in its discretion, may request the County to sell or exchange any personal property which may at any time constitute a part of the Demised Premises, and to release said personal property from this Sublease, if (a) in the opinion of the Borrower the property so sold or exchanged is no longer required or useful in connection with the operation of the Demised Premises; (b) the consideration to be received from the property is of a value substantially equal

to the value of the property to be released; and (c) if the value of any such property shall, in the opinion of the County, exceed the amount of \$100,000, the County shall have been furnished a certificate of an independent engineer or other qualified independent professional consultant (satisfactory to the County) certifying the value thereof and further certifying that such property is no longer required or useful in connection with the operation of the Demised Premises. In the event of any such sale, the full amount of the money or consideration received for the personal property so sold and released shall be paid to the County. Any money so paid to the County may, so long as the Borrower is not in default under any of the provisions of this Sublease, be used upon the Written Request of the Borrower either to prepay Base Rental pursuant to Section 7.02(c) or to purchase personal property, which property shall become a part of the Demised Premises leased hereunder. The County may require such opinions, certificates and other documents as it may deem necessary before permitting any sale or exchange of personal property subject to this Sublease or before releasing for the purchase of new personal property money received by it for personal property so sold.

## ARTICLE VIII

### REPRESENTATIONS AND COVENANTS

#### SECTION 8.01. Right of Entry.

The County and its assignees shall have the right to enter upon and to examine and inspect the Demised Premises during reasonable business hours (and in emergencies at all times) (a) to inspect the same; (b) for any purpose connected with the County's or the Borrower's rights or obligations under this Sublease; and (c) for all other lawful purposes.

#### SECTION 8.02. Liens.

In the event the Borrower shall at any time during the term of this Sublease cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Demised Premises, the Borrower shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the Borrower in, upon or about the Demised Premises and shall keep the Demised Premises free of any and all mechanics' or materialmen's liens or other liens against the Demised Premises or the County's interest therein. In the event any such lien attaches to or is filed against the Demised Premises or the County's interest therein, the Borrower shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the Borrower desires to contest any such lien it may do so in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the Borrower shall forthwith pay and discharge said judgment. The Borrower agrees to and shall, to the maximum extent permitted by law, indemnify and hold the County and its members, supervisors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Demised Premises or the County's interest therein.

SECTION 8.03. [Quiet Enjoyment.](#)

The parties hereto mutually covenant that the Borrower, by keeping and performing the covenants and agreements herein contained and not in default hereunder, shall at all times during the term of this Sublease peaceably and quietly have, hold and enjoy the Demised Premises without suit, trouble or hindrance from the County.

SECTION 8.04. [County Not Liable.](#)

The County and its supervisors, officers, agents and employees 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 and employees, 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 8.05. [Assignment and Subleasing.](#)

Neither this Sublease nor any interest of the Borrower hereunder shall be mortgaged, pledged, assigned, sublet or transferred by the Borrower by voluntary act or by operation of law or otherwise, except with the prior written consent of the County, which, in the case of subletting, shall not be unreasonably withheld. No such mortgage, pledge, assignment, lease or transfer shall in any event affect or reduce the obligation of the Borrower to make the Base Rental Payments and Additional Payments required hereunder.

SECTION 8.06. [Taxes.](#)

The Borrower shall pay or cause to be paid all taxes and assessments of any type or nature charged to the County or affecting the Demised Premises or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of this Sublease as and when the same become due.

The Borrower shall also pay directly such amounts, if any, in each year as shall be required by the County for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines or interest arising out of any delay or failure by the Borrower to pay any of the foregoing or failure to file or furnish to the County for filing in a timely manner any returns, hereinafter levied or imposed against the County or the Demised Premises, the rentals and other payments required hereunder or any parts thereof or interests of the Borrower or the County therein by any governmental authority.

The Borrower may, at the Borrower's expense and in its name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the County shall notify the Borrower that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the County in the Demised Premises will be materially endangered or the Demised Premises, or any part thereof, will be subject to loss or forfeiture, in which event the Borrower shall promptly pay such taxes, assessments or charges or provide the County with full security and bond against any loss which may result from nonpayment, in form satisfactory to the County.

SECTION 8.07. [County's Purpose.](#)

The County covenants that, prior to the discharge of this Sublease, it will not engage in any activities related to the Demised Premises that are inconsistent with the purposes for which the County is organized.

SECTION 8.08. [Purpose of Lease.](#)

The Borrower covenants that during the term of this Sublease, except as hereinafter provided, (a) it will use, or cause the use of, the Demised Premises for public purposes and for the purposes for which the Demised Premises are customarily used, (b) it will not vacate or abandon the Demised Premises or any part thereof, and (c) it will not make any use of the Demised Premises which would jeopardize in any way the insurance coverage required to be maintained pursuant to Article V hereof.

SECTION 8.09. [Insurance Obtained.](#)

The Borrower has obtained insurance as required herein and all required policies are in full force and effect and have not been revoked or rescinded.

SECTION 8.10. [No Litigation.](#)

No action, suit, proceeding or investigation exists or has been threatened against the Borrower which if adversely determined, could materially adversely affect the financial position of the Borrower.

## ARTICLE IX

### DISCLAIMER OF WARRANTIES; RISK OF LOSS; VENDOR'S WARRANTIES; USE OF THE DEMISED PREMISES

#### SECTION 9.01. Disclaimer of Warranties; Risk of Loss.

THE COUNTY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE DEMISED PREMISES OR WARRANTY WITH RESPECT THERETO. THE BORROWER ACKNOWLEDGES THAT THE COUNTY IS NOT A MANUFACTURER OF THE DEMISED PREMISES OR A DEALER THEREIN, THAT THE BORROWER LEASES THE DEMISED PREMISES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE BORROWER. In no event shall the County be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Sublease or the existence, furnishing, functioning or the Borrower's use of any item or products or services provided for in this Sublease.

Subject to Section 3.06 hereof, the Borrower, whether or not covered by insurance or self-insurance, hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Demised Premises from any cause whatsoever, and no such loss of or damage to or liability arising from the Demised Premises shall relieve the Borrower of the obligation to make the Base Rental Payments, subject to Section 3.06 of this Sublease, or to perform any other obligation under this Sublease. Whether or not covered by insurance or self-insurance, the Borrower hereby agrees to reimburse County (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by County, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Sublease or any of the transactions contemplated hereby; (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Demised Premises; (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Demised Premises resulting in damage to property or injury to or death to any person; and/or (d) the breach of any covenant of Borrower under or in connection with this Sublease or any material misrepresentation provided by Borrower under or in connection with this Sublease. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Sublease or the termination of the term of this Sublease for any reason.

#### SECTION 9.02. Use of the Demised Premises.

The Borrower will not install, use, operate or maintain the Demised Premises improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The Borrower shall provide all permits and licenses, if any, necessary for the installation and operation of the Demised Premises. In addition, the Borrower agrees to comply in all respects (including, without limitation, with respect to the use, maintenance

and operation of the Demised Premises) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Demised Premises; provided, however, that the Borrower may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the County, adversely affect the estate of the County in and to the Demised Premises or its interest or rights under this Sublease.

**ARTICLE X**

**MISCELLANEOUS**

SECTION 10.01. Law Governing.

This Sublease shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist.

SECTION 10.02. Notices.

All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests, agreements or promises 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 mail, return receipt requested, postage prepaid:

If to the Borrower: TOWN OF ATHERTON  
George Rodericks, City Manager  
150 Watkins Avenue (Temporary Trailers)  
Atherton, CA 94027

If to the County: COUNTY OF SAN MATEO  
Office of the County Manager/Clerk of the Board of  
Supervisors  
400 County Center, 1st Floor  
Redwood City, California 94063-1663  
Attention: Chief Financial Officer

With a copy to:  
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 10.03. Validity and Severability.

If for any reason this Sublease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the County or by the Borrower, or if for any reason it is held by such a court that any of the covenants and conditions of the Borrower hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Sublease is and shall be deemed to be a lease under which the rentals are to be paid by the Borrower annually in consideration of the right of the Borrower to possess, occupy and use the Demised Premises, and all of the rental and other terms, provisions and conditions of this Sublease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

SECTION 10.04. [Net-Net-Net Lease.](#)

This Sublease shall be deemed and construed to be a “net-net-net lease” and the Borrower hereby agrees that the rentals provided for herein shall be an absolute net return to the County, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.05. [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 Sublease.

SECTION 10.06. [Amendment or Termination.](#)

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

SECTION 10.07. [Execution.](#)

This Sublease 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 Sublease. It is also agreed that separate counterparts of this Sublease may separately be executed by the County and the Borrower, all with the same force and effect as though the same counterpart had been executed by both the County and the Borrower.

SECTION 10.08. [Integration.](#)

This Sublease (together with the Lease Agreement) 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 County and the Borrower have caused this Sublease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

COUNTY OF SAN MATEO,

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

TOWN OF ATHERTON,

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

Approved as to Form:

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

**EXHIBIT A**

**Description of the 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**

**Base Rental Payment Schedule**

Year	April 15 Installment Payment	December 15 Installment Payment
1 (2022)	\$148,500	\$148,500
2 (2023)	\$148,500	\$148,500
3 (2024)	\$148,500	\$148,500
4 (2025)	\$148,500	\$148,500
5 (2026)	\$148,500	\$148,500

EXHIBIT C

**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 Sublease from the County of San Mateo to the Town of Atherton, a political subdivision of the State of California (the "County"), is hereby accepted by order of the Town Council of the Town of Atherton on [DATE], and the Town of Atherton consents to recordation thereof by its duly authorized officer.

Town of Atherton,

[SEAL]

By \_\_\_\_\_  
[Name]  
[Title]

Attest:

By \_\_\_\_\_  
Clerk of the Town Council of Atherton