

AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT BETWEEN
CONTRA COSTA COUNTY AND MT. DIABLO UNIFIED SCHOOL DISTRICT
FOR THE OAK PARK BOULEVARD PROJECT

This Amended and Restated Joint Exercise of Powers Agreement ("Agreement") is dated _____, 2018, and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the "County"), and the MT. DIABLO UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California (the "School District").

RECITALS

- A. The California Government Code at Section 6500 *et seq.* provides that two or more public agencies may by agreement jointly exercise powers common to them.
- B. The County and the School District are parties to a Joint Exercise of Powers Agreement dated December 12, 2006, which relates to the disposition of certain real property located on Oak Park Boulevard in the City of Pleasant Hill (the "Original JPA").
- C. The County is the owner of real property located at 1700 Oak Park Boulevard, consisting of approximately 8 acres and having Assessor's Parcel No. 149-230-005 (the "County Property"). The School District is the owner of real property having Assessor's Parcel No. 149-230-008 that is adjacent to the County Property consisting of approximately a 2-acre sub-portion (the "School District Property"). Together, the County Property and the School District Property are the "10-Acre Property." The 10-Acre Property is bordered by Pleasant Hill Middle School to the north and Oak Park Boulevard to the south.
- D. The County is also the owner of real property located at 1750 Oak Park Boulevard, consisting of approximately 4.8 acres and having Assessor's parcel No. 149-271-014 (the "5-Acre Property").
- E. The County intends to seek approvals from the City to enable a home builder to construct single-family detached homes on the 5-Acre Property. Once the County has obtained the entitlements from the City, the County intends to sell the 5-Acre Property to a home builder (the "County Project").
- F. The parties understand that the Pleasant Hill Recreation and Park District (the "Park District") desires to acquire a portion of the 10-Acre Property that is adjacent to Pleasant Hill Middle School ("Site 1") to use for recreational facilities (the "Park District Project"). Site 1 consists of approximately four acres of the County Property ("Lot 3") and one acre of the School District Property ("Lot 4").
- G. The parties understand that the City of Pleasant Hill (the "City") desires to acquire a portion of the 10-Acre Property that is adjacent to Oak Park Boulevard ("Site 2") to use as the site of a new, City-owned, library (the "City Project"). Site 2 consists of approximately four acres of the County Property ("Lot 1") and one acre of the School

District Property (“Lot 2”). The parties understand that the City intends to use Site 2 as the site of a new, City-owned, library.

- H. Attached to this Agreement as Exhibit A is a drawing that shows the location of the 5-Acre Property; Site 1, including Lot 3 and Lot 4; and Site 2, including Lot 1 and Lot 2.
- I. The County, the Park District and the City intend that the County Project, the Park District Project and the City Project be treated as one project for purposes of the California Environmental Quality Act (CEQA) and that the City will act as the lead agency.
- J. The County and the School District desire to amend and restate the Original JPA in order to memorialize the parties’ (i) continuing desire to work together to dispose of the 10-Acre Property, and (ii) agreement to share the proceeds of the sale of the 5-Acre Property to a home builder, with the County receiving 90% of the net sale proceeds and the School District receiving 10% of the net sale proceeds.

Subject to Section 15 below, the County and the School District therefore amend and restate the Original JPA to read in its entirety as follows:

AGREEMENT

- 1. Definitions. The following terms have the following meanings.
 - a. “Project” means the County Project, the Park District Project and the City Project.
 - b. “Project Costs” means the costs incurred by the County in connection with the Project, including, but not limited to securing the entitlements and permits necessary to enable a home builder to construct single-family detached homes on the 5-Acre Property, marketing fees, brokerage commissions, consultant fees, County staff costs, title and escrow fees, abatement and demolition of the existing County Library and administration building, abatement and demolition of the former Oak Park elementary school, and the County’s share of CEQA-related expenses.
- 2. Responsibilities of County and School District.
 - a. The following activities will be undertaken by the County if the County decides to proceed with the sale of the 5-Acre Property. The School District hereby authorizes the County to perform these activities:
 - i. Take whatever steps the County deems appropriate to carry out the Project.
 - ii. Comply with the County’s statutory requirements for the sale of the 5-Acre Property.

- iii. Advertise the 5-Acre Property for sale to a third party, and, if the County so chooses, negotiate and enter into agreements for the sale of the 5-Acre Property through marketing specialists, brokers and internet sales specialists.
 - iv. Negotiate and, if the County deems it appropriate, enter into a purchase and sale agreement with a third party for the 5-Acre Property.
 - v. Instruct the School District to deliver a grant deed into escrow conveying title to Lot 4 to the Park District.
 - vi. Instruct the School District to deliver a grant deed into escrow conveying title to Lot 2 to the City.
 - vii. Take whatever steps the County deems appropriate to provide security at the 10-Acre Property and the 5-Acre Property.
 - viii. Execute, acknowledge and deliver all other instruments and perform all other acts necessary, desirable or proper to carry out the purposes of this Agreement, including vacating the road easement the County holds across the School District Property.
- b. The following activities will be undertaken by the School District if the County decides to proceed with the sale of the 5-Acre Property. The County hereby authorizes the School District to perform these activities:
- i. Satisfy all of the School District's requirements for the conveyance of the School District Property in accordance with the relevant agreements between the School District and the Park District, and the School District and the City, including the service and publication of any necessary notices.
 - ii. Deliver a grant deed, in recordable form and properly authorized and executed on behalf of the School District, into escrow, conveying title to Lot 4 to the Park District in fee simple absolute.
 - iii. Deliver a grant deed, in recordable form and properly authorized and executed on behalf of the School District, into escrow, conveying title to Lot 2 to the City in fee simple absolute.
 - iv. Execute, acknowledge and deliver all other instruments and perform all other acts necessary, desirable or proper to carry out the purposes of this Agreement.
3. Distribution of Net Sales Proceeds. In consideration for the transfer of the School District Property in accordance with this Agreement, the County will instruct the title company handling the escrow for the conveyance of the 5-Acre Property to (i) first, reimburse the County for the Project Costs, which will be set forth in the escrow instructions provided by

the County (ii) second, pay any other closing costs, and (iii) distribute the remaining sales proceeds as follows:

To School District: Ten percent (10%) of the net sales proceeds from the sale of the 5-Acre Property; and

To County: All of the remaining net sales proceeds from the sale of the 5-Acre Property.

The School District is not entitled to any proceeds from the sale of any portion of the 10-Acre Property.

4. Restrictions. Pursuant to Government Code section 6509, the powers of the parties under this Agreement are subject to the restrictions on such powers applicable to the County.
5. Accountability. Pursuant to Government Code section 6505, each party to this Agreement is subject to strict accountability for all funds received or disbursed in connection with the Project.
6. Agreement Modification. This Agreement may be modified only with the written consent of the governing bodies of both parties.
7. Agreement Termination. Unless terminated earlier as a result of the County's decision not to sell the 5-Acre Property or proceed with the Project, this Agreement will terminate upon the close of escrow for the 5-Acre Property.
8. Notices. All notices (including requests, demands, approvals and other communications) given in connection with this Agreement must be in writing. The place for delivery of all notices given in connection with this Agreement is as follows:

To School District: Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519-1397
Attn: Chief Business Officer

To County: Contra Costa County
Public Works Department
40 Muir Road, 2nd Floor
Martinez, CA 94553
Attn: Principal Real Property Agent

9. Entire Agreement. This Agreement, including the recitals and the exhibits, contains the entire understanding of the parties relating to the subject matter of this Agreement.
10. Counterparts. This Agreement may be executed in counterparts.

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11. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement may not be construed as if it had been prepared by one of the parties, but rather as if both parties prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement. The recitals and exhibits are, and are to be enforced as, a part of this Agreement.
 12. Further Assurances. Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents, as may be necessary, expedient or proper in order to complete all conveyances, transfers, sales and assignments under this Agreement, and do all other acts and to execute, acknowledge and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.
 13. Waiver. A waiver of any covenant or provision of this Agreement is not to be deemed a waiver of any other covenant or provisions in this Agreement and no waiver is valid unless it is in writing and executed by the waiving party.
 14. Severability. If any term or provision of this Agreement is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement will not be affected.
 15. Effect of Property Transfer Not Occurring. If for any reason, the transfer of the 10-Acre Property contemplated by this Agreement does not occur on or before December 31, 2020, this Agreement will be null and void and the Original JPA will continue in effect and will be unchanged by this Agreement.

[Remainder of Page Intentionally Left Blank]

16. Governing Law and Venue. This Agreement is governed by the laws of the State of California. The venue of any litigation pertaining to this Agreement will be Contra Costa County, California.

The parties are signing this Agreement as of the date first above written.

CONTRA COSTA COUNTY

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____
David J. Twa
County Administrator

By: _____
Nellie Meyer
Superintendent

RECOMMENDED FOR APPROVAL

BY: _____
Karen Laws
Principal Real Property Agent

APPROVED AS TO FORM

APPROVED AS TO FORM

SHARON L. ANDERSON,
COUNTY COUNSEL

BY: _____
Deputy County Counsel

By: _____
District Counsel

EXHIBIT A

[Depiction of Five-Acre Property, Site 1 and Site 2]