

AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement is dated April 21, 2015, and is between the County of Contra Costa, a political subdivision of the State of California (the "County") and the City of Lafayette, a municipal corporation (the "City").

Recitals

- A. The County and the City are parties to a Purchase and Sale Agreement dated November 25, 2013 (the "Original Agreement"), pursuant to which the County sold to the City the real property commonly known as 952 Moraga Road, Lafayette, California (the "Property").
- B. The Original Agreement includes a provision that limits (1) the manner in which the County may use the net proceeds of the sale of the Property to the City, and (2) the manner in which the City may use the net proceeds of any sale of the Property that occurs within ten years of the City's purchase of the Property from the County. The parties now desire to amend the Original Agreement to modify these restrictions.

The parties therefore agree to amend the Original Agreement as follows:

1. Section 6 – Use of Proceeds is deleted in its entirety and replaced with the following:
 6. Use of Proceeds. Proceeds from the sale of the Property to the City are to be applied first to reimbursing the County for all costs incurred by the County in connection with transferring the Property to the City, including the cost of litigating the quiet title action and the cost of maintaining the Property prior to its transfer to the City (the "Costs"). A statement of the Costs that are known to the County as of the date of this Agreement is set forth in Exhibit C attached to this Agreement. The County is entitled to reimbursement of Costs through the Closing Date. Once known, the County will provide a statement of such Costs to the City. The "Net Proceeds" from the sale of the Property to the City is an amount equal to the Purchase Price less the Costs.
 - a. Special Fund. The County shall deposit the Net Proceeds in a special account within the County's Library Fund. Funds in the special account may only be used (i) to reimburse the County for Costs that exceed the amounts shown on Exhibit C, and (ii) for Permitted Uses, as defined below. The County Librarian is solely responsible for the use of the special fund, however he or she will consult with the City Manager before expending funds in the special account. The County shall maintain an accounting of the uses of the funds in the special account and shall provide a copy of such accounting to the City following receipt of a written request from the City.

- b. County's Use of Net Proceeds. The County's use of the Net Proceeds under Section 6.a.(ii) above is restricted to the following: (i) additional hours for the branch of the County library located at 3491 Mt. Diablo Boulevard, Lafayette, California (the "New Library") above the County minimum service levels provided to all libraries in Contra Costa County, (ii) additional books and other materials for the collection, (iii) servicing, maintaining, and replacing technical equipment at the New Library that is used in the County's operation of the New Library, (iv) furniture, fixtures and equipment at the New Library, and (v) maintenance and repair of those portions of the New Library that are used in the County's operation of the New Library (together, the "Permitted Uses").
- c. City's Use of Property Sale Proceeds. If the City sells the Property within ten years after the Closing Date to a private party, the City's use of the net proceeds from such sale (after deduction of City's costs of such sale) is restricted to the Permitted Uses. However, if the City sells the Property within ten years after the Closing Date to a public agency, the City's use of the net proceeds from such sale is not restricted and, furthermore, the City shall cause the Purchase and Sale Agreement for that transaction to include a provision to the effect that, if the public agency sells the Property before November 25, 2023, the public agency's use of the net proceeds from such sale is restricted to the Permitted Uses. In any event, if the City sells the Property, the City shall maintain an accounting of the sources and uses of the net sale proceeds and shall provide a copy of such accounting to the County following receipt of a written request from the County.
- d. Dispute Resolution. If the City disputes the County's use of the Net Proceeds under Section 6.b.(ii) above, or if the County disputes the City's use of proceeds from the City's subsequent sale of the Property, the parties will first attempt to resolve the dispute through informal discussions. If the parties are unable to resolve the matter informally within 30 days after first meeting, either party may submit the matter to a non-binding, structured mediation procedure fashioned by persons or organizations experienced in alternative dispute resolution. The mediation may be requested by either party and must be initiated within 30 days after the date of the request, unless extended by both parties. The alternative dispute resolution procedures used for the mediation will include the exchange of written claims and responses, with supporting information, at least seven days before the mediation. The positions expressed and the mediator's recommendations are not admissible as evidence in any subsequent legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party may pursue any legal remedy available. If an applicable statute of limitations would run during the pendency of the dispute resolution process described above, the parties may agree in writing to toll the statute of limitations period to complete the dispute resolution process, but no statute of limitations may be tolled for more than 90 calendar days.

2. All other terms of the Original Agreement remain unchanged.

COUNTY OF CONTRA COSTA

CITY OF LAFAYETTE

By _____
David Twa
County Administrator

By _____
Steven Falk
City Manager

APPROVED AS TO FORM

Sharon L. Anderson,
County Counsel

APPROVED AS TO FORM

Best Best & Krieger LLP
City Attorney

By _____
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By _____
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