



COUNTY ADMINISTRATOR

SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

July 16, 2013

DONNA LINTON
ASSISTANT COUNTY ADMINISTRATOR

Honorable Board of Directors
Alameda County Public Facilities Corporation
1221 Oak Street, Suite 555
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE THIRD AMENDED LEASE AGREEMENT BETWEEN THE CORPORATION AND THE COUNTY TO CORRECT A DEFECT IN THE SECOND AMENDED LEASE AGREEMENT RELATED TO THE 1989 CERTIFICATES OF PARTICIPATION

RECOMMENDATION:

It is recommended that your Board:

1. Authorize and approve the attached resolution amending the lease agreement between the Alameda County Public Facilities Corporation (Corporation) and the County, which was originally executed as part of the 1989 Certificates of Participation (COP), to correct a defect in a prior amendment;
2. Approve the Third Amendment to Lease Agreement, correcting an error in the description of property released pursuant to the Second Amendment to Lease Agreement; and
3. Authorize the President of the Corporation to execute all documents and take all other action necessary and appropriate to complete and accomplish the above-stated transaction.

DISCUSSION/SUMMARY:

In 1989, the Corporation issued COPs, for the purpose of financing multiple capital projects, including the purchase and renovation of the Lakeside Building and the remodeling of several Highland Hospital buildings; several County buildings were leased to secure this debt. In 1991, the Corporation and the County amended the 1989 lease, substituting Fairmont Hospital in place of the other County properties in the leasehold. In 1998, the Corporation and the County amended the lease a second time, intending thereby to release Fairmont Hospital from the leasehold

A preliminary title report recently obtained for Fairmont Hospital revealed a defect in the second amended lease agreement: the attachments to that amendment were mislabeled, so the intended release of Fairmont Hospital was not legally recorded. The attached resolution authorizes a third amendment to correct the defect in the second amendment, thereby providing clear title for Fairmont Hospital.

FINANCING:

There is no financial impact resulting from this action.

Very truly yours,



Susan S. Muranishi
County Administrator

SSM:DL:LK:ep

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Attachment

c: Patrick O'Connell, Auditor-Controller
Donald R. White, Treasurer/Tax Collector

Recording requested by
and return to:

COUNTY OF ALAMEDA
c/o Squire Sanders (US) LLP
275 Battery Street, Suite 2600
San Francisco, California 94111

Attention: Patricia Gump, Esq.

THIRD AMENDMENT TO LEASE AGREEMENT

between

ALAMEDA COUNTY PUBLIC FACILITIES CORPORATION

and the

COUNTY OF ALAMEDA

Dated as of _____, 2013

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

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement, dated as of _____, 2013 (the "Third Amendment"), between the Alameda County Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the County of Alameda, a county and political subdivision of the State of California duly organized and validly existing under the laws of the State of California (the "County");

WITNESSETH:

WHEREAS, the Corporation and the County entered into a certain Lease Agreement, dated as of August 1, 1989 (the "Original Lease Agreement"), a certified copy of which was recorded August 15, 1989 as Instrument No. 89-221585, Official Records of Alameda County, California;

WHEREAS, the Corporation and the County entered into that certain First Amendment to Lease Agreement, dated as of February 1, 1991 (the "First Amendment"), a certified copy of which was recorded February 22, 1991, as Instrument No. 91-050243, Official Records of Alameda County, California, in order to amend the description of property leased pursuant to the Original Lease Agreement;

WHEREAS, the Corporation and the County entered into that certain Second Amendment to Lease Agreement, dated as of December 1, 1998, a certified copy of which was recorded December 9, 1998 (the "Second Amendment"), as Instrument No. 98-433306, Official Records of Alameda County, California;

WHEREAS, the Second Amendment purported to amend the description of property leased pursuant to the Original Lease Agreement, as amended by the First Amendment, by substituting therefor the property described in Exhibit B to the Second Amendment;

WHEREAS, the Second Amendment additionally purported to release from the leasehold created by the Original Lease Agreement, as amended by the First Amendment, the property described in Exhibit C to the Second Amendment;

WHEREAS, the Second Amendment contains two exhibits identified as "Exhibit B" and no exhibit identified as "Exhibit C;"

WHEREAS, the County has determined that one of such exhibits identified as "Exhibit B" is erroneously identified as such and now desires to amend the Original Lease Agreement in order to clarify which property is subject to the leasehold created by the Original Lease Agreement and which property is released from the leasehold;

WHEREAS, Section 10.4 of the Original Lease Agreement provides that the Lease Agreement may be amended to correct any defective provision;

NOW, THEREFORE, in consideration of the above premises and of the mutual agreements hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Lease Agreement.

SECTION 2. Corrective Amendment. The Exhibit B containing the description below is hereby redesignated as "Exhibit C." Consistent with Section 3 of the Second Amendment, the County does hereby affirm that it remises, releases and terminates all of its leasehold interest in and to the real property described below and the improvements thereon.

The real property described below is not subject to the Lease Agreement. It is set forth solely to identify the location of the improvements described on the following page.

Portion of County of Alameda Fairmont Hospital Site.

All that certain real property situated in the unincorporated area of the Township of Eden, County of Alameda, State of California, described as follows:

COMMENCING at a point on the southeastern line of Fairmont Drive, as said line was established under Alameda County Board of Supervisor's Resolution No. 161368, adopted June 17, 1975, a certified copy of which was recorded June 18, 1975, in Reel 4006 of Official Records at Image 277 thereof (75-84755), Records of Alameda County, California, said point being distant along said southeastern line of Fairmont Drive, north 34° 32' 27" east (the bearing of said southeastern line being taken as north 34° 32' 27" east for the purpose of making this description), 378.16 feet from the southwestern terminus of that certain course described as south 34° 32' 27" west, 418.16 feet* in said resolution and running thence along said southeastern line, and along the eastern line of said Fairmont Drive the following three (3) courses and distances: North 34° 32' 27" east, 40.00 feet; thence northeasterly and northerly on the arc of a curve to the left, tangent at last said point to a course which bears north 34° 58' 42" east, the radius of which curve is 767.08 feet, through a central angle of 22° 09' 11", a distance on said arc of 296.56 feet to a point thereon, tangent as last said point to a course which bears north 12° 49' 31" east; thence north 24° 41' 21" east, 167.81 feet; thence leaving said eastern line of Fairmont Drive, north 88° 42' 30" east, 197.04 feet; thence south 47° 27' 33" east, 486.00 feet; thence south 50° 47' 30" west, 163.00 feet; thence south 42° 32' 27" west, 390.00 feet; thence north 55° 27' 33" west, 458.00 feet to the point of commencement.

Containing 7.102 acres, more or less.

All bearings and distances in this description are based on the California Coordinate System, Zone III. To obtain ground level distances, multiply stated distances by 1.0000786.

Improvements to Such Real Property

Improvements subject to the First Amendment to Site Lease shall include improvements to all of the following buildings which are located on the real property described above, as shown below:

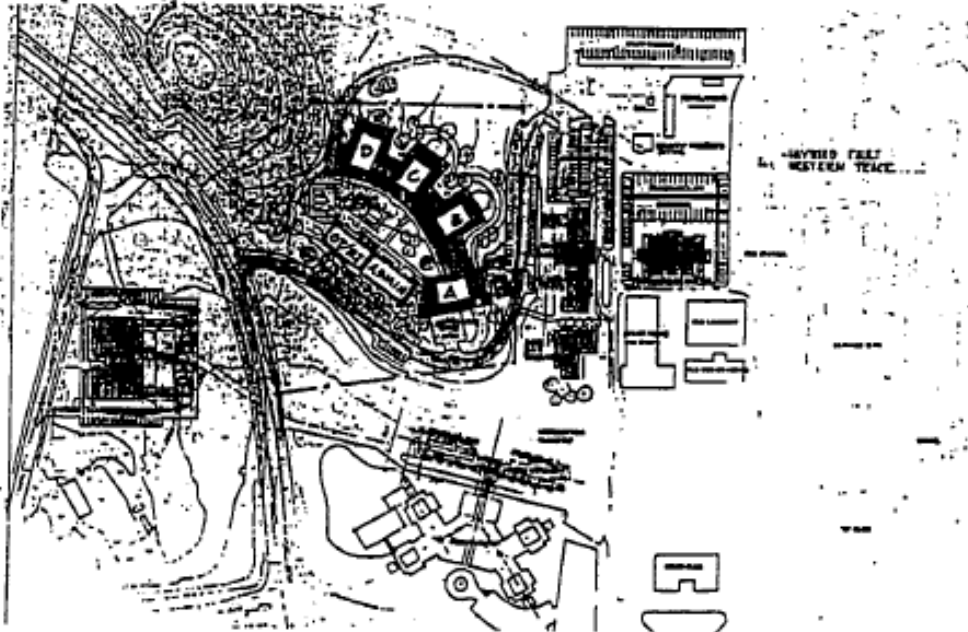
The entirety of the approximately 7,365 square foot building used by the Alameda County Mental Health Facility as its Adult Outpatient Building.

The entirety of the approximately 5,920 square foot building used by the Alameda County Mental Health Facility as its Outpatient Administration Building.

The entirety of the approximately 7,140 square foot building used by the Alameda County Mental Health Facility as its Children Outpatient Building.

The entirety of the approximately 4,600 square foot building used by the Alameda County Mental Health Facility as its Adult Day Treatment Building.

The entirety of buildings A, B, C, D and the OT/RT Administration Buildings comprised of approximately 75,132 square feet and used by the Alameda County Mental Health Facility as its Acute Care Facility (Buildings A-D) as its Occupational Therapy/Recreational Therapy and Administration Buildings, respectively.



SECTION 3. Effect of Third Amendment to Lease Agreement. Except as amended by Section 2 hereof, the provisions of the Original Lease Agreement, as amended by the First Amendment and the Second Amendment, shall remain in full force and effect and shall not otherwise be changed, altered, amended or modified by this Third Amendment.

SECTION 4. Counterparts. This Third Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute one complete instrument.

IN WITNESS WHEREOF, the Corporation and the County have caused this Third Amendment to be executed by the duly authorized officers thereof as of the date first above written.

**ALAMEDA COUNTY PUBLIC
FACILITIES CORPORATION, as lessor**

By: _____
[President]

Attest:

By: _____
[Secretary]

**COUNTY OF ALAMEDA, CALIFORNIA,
as lessee**

By: _____
President of the Board of Supervisors

Attest:

By: _____
Assistant Clerk of the Board

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, before me, _____ a Notary Public in and for the State of California, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

STATE OF CALIFORNIA)
)
 COUNTY OF ALAMEDA)

On _____, before me, _____ a Notary Public in and for the State of California, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Signature of Notary

(Affix seal here)

ALAMEDA COUNTY PUBLIC FACILITIES CORPORATION

RESOLUTION NO. ____

A RESOLUTION OF THE ALAMEDA COUNTY PUBLIC FACILITIES CORPORATION AUTHORIZING AN AMENDMENT TO A LEASE AGREEMENT BETWEEN THE COUNTY OF ALAMEDA, CALIFORNIA AND THE ALAMEDA COUNTY PUBLIC FACILITIES CORPORATION, AND APPROVING THE TAKING OF ALL NECESSARY AND APPROPRIATE ACTIONS IN CONNECTION THEREWITH

WHEREAS, The Board of Supervisors (the “Board of Supervisors”) of the County of Alameda, California (the “County”) has duly established the Alameda County Public Facilities Corporation (the “Corporation”) to render financial assistance to the County by financing, acquiring, constructing, improving, leasing and selling buildings, building improvements, equipment, electrical, water, sewer, road and other public improvements, lands, and any other real or personal property for the benefit of residents of the County and surrounding areas;

WHEREAS, the Corporation and the County entered into a certain Lease Agreement, dated as of August 1, 1989 (the “Original Lease Agreement”), pursuant to which certain improvements to real property (the “Property”) described therein were leased by the Corporation to the County;

WHEREAS, the Corporation and the County entered into that certain First Amendment to Lease Agreement, dated as of February 1, 1991 (the “First Amendment”), in order to amend the description of the Property leased pursuant to the Original Lease Agreement;

WHEREAS, the Corporation and the County entered into that certain Second Amendment to Lease Agreement, dated as of December 1, 1998 (the “Second Amendment”), which purported to amend the description of the Property leased pursuant to the Original Lease Agreement, as amended by the First Amendment, by substituting therefor certain real property described in an exhibit in the Second Amendment;

WHEREAS, the Second Amendment additionally purported to release from the leasehold created by the Original Lease Agreement, as amended by the First Amendment, certain real property described in an exhibit to the Second Amendment;

WHEREAS, the County has determined that one of the exhibits to the Second Amendment was erroneously identified and now desires to amend the Original Lease Agreement in order to clarify which property is subject to the leasehold created by the Original Lease Agreement and which property is released from the leasehold;

WHEREAS, the Corporation deems it appropriate to enter into a Third Amendment to Lease Agreement (the “Third Amendment”), pursuant to which one of the exhibits erroneously identified as “Exhibit B” shall be correctly identified as Exhibit C;

WHEREAS, there has been made available (by filing with the County Administrator) or presented to the Board of Directors of the Corporation (the "Board of Directors") a proposed form of the Third Amendment; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Corporation is duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

Section 1. The Board of Directors finds that all of the recitals herein are true and correct and that the proposed Third Amendment is for the common benefit of the County and the residents therein.

Section 2. The proposed form of the Third Amendment is hereby approved. Any of the Chairman, Vice-Chairman, President, Vice-President, Treasurer or duly authorized designee (each, an "Authorized Officer") and each of them alone or in combination are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver and the Secretary is hereby authorized to attest to the Third Amendment in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Each of the Authorized Officers is hereby authorized and directed, alone or in combination, to do any and all things that they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, including, but not limited to, execution of certificates, including signature certificates and certificates required in connection with any consent or approval needed in order to consummate the transactions herein authorized. The Authorized Officers of the Corporation are hereby further authorized and directed to execute and deliver any and all certificates, written requests and other certificates necessary or desirable to pay or reimburse the County for costs related to the transactions herein authorized or to accomplish the transactions contemplated herein.

Section 4. All consents, approvals, notices, orders, requests and other actions permitted or required by the Third Amendment by any of the documents authorized by this Resolution, whether before or after the execution of the Third Amendment, including without limitation executing any documents or agreements necessary to clarify title in any Property leased pursuant to the Original Lease Agreement, as amended by the First Amendment, Second Amendment and Third Amendment, or related documents, or any of the foregoing which may be necessary or desirable in connection with administering the documents may be taken or given by each Authorized Officer, or a designee of any one of them, without further authorization by this Board of Directors, and each Authorized Officer or a designee of any one of them is hereby authorized and directed to give such consent, approval, notice, order or request and to take any

such action which such officer may deem necessary or desirable to further the purposes of this Resolution and accomplish the transactions contemplated hereby.

Section 5. All actions heretofore taken by the officers and agents of the Board of Directors or the Corporation with respect to the transactions described herein are hereby ratified, confirmed and approved.

Section 6. This Resolution shall take effect from and after its adoption and approval.

[Remainder of Page Intentionally Left Blank]

THE FOREGOING was **PASSED** and **ADOPTED** by the following vote of the Board of Directors of the Alameda County Public Facilities Corporation this 30th day of July, 2013 to wit:

AYES:

NOES:

ABSENT:

**ALAMEDA COUNTY PUBLIC
FACILITIES CORPORATION**

By: _____
President

ATTEST:

By: _____
Acting Secretary

SANFRANCISCO/501906.3