

**AGREEMENT
(400 W. Branch Street)**

THIS AGREEMENT is made this ____ day of _____, 2023, by and between the City of Arroyo Grande, California, a municipal corporation (hereinafter “City”) and the County of San Luis Obispo (hereinafter “County”).

RECITALS

WHEREAS, in 1989, the City Council of the City of Arroyo Grande adopted Resolution 2293, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, whereby the City purported to accept certain property, consisting of approximately 4.26 acres located at 400 W. Branch Street, from Mid Coast Land, which property is described in Exhibit B, attached hereto and incorporated herein by reference (the “Property”). The transfer was subject to deed restrictions limiting development to municipal office space use and conveying it to the County if it was not developed within ten years. Resolution 2293 referenced an exhibit with conditions stated thereon in the form of transfer of interest from Mid Coast Land and others; however, there is no exhibit attached and no transfer of ownership occurred as a result of Resolution 2293; and

WHEREAS, in 1991 the City Council of the City of Arroyo Grande amended Resolution 2293 by adopting Resolution 2438, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, whereby the City accepted the Property, but amending the transferor to be Royal Oaks Estates and allegedly correcting the legal description. Resolution 2438 also included a provision that the Property was subject to deed restrictions, this time limiting development to municipal use and conveying it to the County if it was not developed within ten years; and

WHEREAS, in 1993 an agreement with the County was executed (the “1993 Agreement”), a copy of which is attached hereto as Exhibit D and incorporated herein by reference, Section 2, purported to amend the deed restriction to provide that the Property may be used for municipal facilities or, with the prior approval of the Board of Supervisors, leased to a nonprofit organization to fulfill a charitable purpose, including youth recreation, and contained a clause that if the provision was violated, the Property would revert back to the County; and

WHEREAS, the 1993 Agreement asserted that the City was the fee owner of Parcel 1 of Map AG-76-451, which is the property affected by the deed restriction amendment; however, Map AG-76-451 predated the subdivision of the property and in 1993 the referenced parcel no longer existed, having been subdivided into three parcels (only one of which the City owned, and which was referenced in the 1989 and 1991 Resolutions and the Partnership Grant Deed by which the Property was conveyed); and

WHEREAS, in the 2009 Memorandum of Understanding (“MOU”) by and between the County of San Luis Obispo and the City of Arroyo Grande Regarding Acquisition of Property for the New Arroyo Grande Public Safety Facility and Removal of Deed Restriction on Recreation Site, a copy of which is attached hereto as Exhibit E and

incorporated herein by reference, the City requested to remove the deed restriction from 1 acre of the total Property for the future sale of up to four residential lots to assist the City with the cost of developing a future recreation center on the remainder of the Property; and

WHEREAS, neither Resolution 2293, Resolution 2438, the 1993 Agreement, nor any deed restriction was ever properly recorded against the Property and no deed restriction appears on the preliminary title report for the Property; and

WHEREAS, in 2006, the City executed a Lease Agreement with the 5 Cities Community Service Foundation (the "Foundation") related to the construction and operation of a community sports and recreational facility on the Property. In April of 2010, the City and the Foundation then entered into a Development Agreement to facilitate the Foundation's construction and operation of a 53,712 square foot community sports and recreation center on the Property. The Foundation did not pursue the project and the City has indicated that the Lease has been or will be terminated; and

WHEREAS, City staff has evaluated the Property for its potential to be used for City work or operations, and has determined that it is not suitable for the City's use. It is not otherwise being used by the City and no planned City facility or building that the City can financially afford is feasible to develop on the site; and

WHEREAS, the City is now seeking to sell the Property and has declared the Property non-exempt surplus property pursuant to the Surplus Lands Act (Government Code Section 54220 et seq.), which requires that public entities must provide Notices of Availability to housing sponsors for the purpose of developing low and moderate income housing, and must also engage in good faith negotiations to sell the property with any housing sponsor that expresses an interest in acquiring the property; and

WHEREAS, the parties recognize that the deed restrictions referenced in the Resolution accepting the Property from Royal Oaks Estates and the 1993 Agreement between the County and the City, as well as the Lease and Development Agreement with the Foundation, all create clouds and impediments to the ultimate sale and disposal of the Property, which interests will also need to be disclosed in the Notice of Availability. Therefore, those clouds likely could impede the development on the Property; and

WHEREAS, the original intentions of the parties with regard to the use of the Property that were contemplated when the City acquired the Property in 1991, as well as the modification of the restrictions by the 1993 Agreement with the County, are no longer relevant or necessary and the parties mutually desire to remove any clouds on the title of the Property that may exist as a result of those documents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by and between the parties as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein.

2. 1993 Agreement. County hereby agrees that the restrictions, agreements, and covenants set forth in the 1993 Agreement shall have no further force or effect with respect to the Property and shall cease to be an encumbrance on the Property. The County hereby waives any rights or claims that it may have under the 1993 Agreement or to the Property as of the execution of this Agreement.

3. Quitclaim Deed. County hereby agrees to execute a Quitclaim Deed in the form attached hereto as Exhibit F and incorporated herein by reference in favor of City. As of the date upon which the Quitclaim Deed is recorded in the Official Records of San Luis Obispo County, California, County will release and relinquish any and all interest it may have in the Property, including, but not limited to, any interest that may have been created by Arroyo Grande City Council Resolutions 2293 or 2438 or the 1993 Agreement.

4. Proceeds. In the event that the Property is sold or leased to a third party, within a reasonable amount of time after such sale or lease, City agrees to pay at least twenty-five percent (25%) (the "Community Center Payment"), of the net proceeds from the sale or lease of the Property for the development of a new community center or other municipal facilities within the Arroyo Grande area. Upon demand, City shall provide County with confirmation that it has complied with this section. In the event City fails to pay the Community Center Payment within five (5) years from the sale or lease of the Property, City shall meet and confer with the County, and every five years thereafter, about the anticipated time period for the expenditure of said funds. City's meet and confer obligation shall cease once the funds are fully expended.

5. Acknowledgment of 2009 MOU. Notwithstanding anything herein, City and County agrees that nothing in this Agreement shall amend or modify any of the terms, conditions and obligations of the 2009 MOU.

6. Modification. No modification of this Agreement shall be effective unless set forth in a writing signed by all parties.

7. Judicial Enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any term, condition, covenant or restriction contained herein.

8. Governing Law. This Agreement has been executed and delivered in, and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of California.

9. Enforceability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

10. Attorney's Fees. If suit, arbitration or other action of any type or nature is brought to enforce any of the terms and conditions of this Agreement, be it in law or in equity, the

prevailing party shall be entitled to an award of its attorney's fees in addition to all other costs and/ or expenses of collection, suit, arbitration and/ or other action taken.

11. Authority of Parties. All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

12. Counterparts. This Agreement may be executed in one or more counterparts and each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

CITY OF ARROYO GRANDE:

County of San Luis Obispo

By: _____
Caren Ray Russom, Mayor

By: _____
Chair, Board of Supervisors

ATTEST:

Jessica Matson, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Rita Neal, County Counsel

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] [is or are] subscribed to the within instrument, and acknowledged to me that [he or she or they] executed the same in [his or her or their] authorized [capacity or capacities], and that by [his or her or their] signature[s] on the instrument the persons[s], or the entity upon behalf of which the person[s] acted, executed the instrument.
WITNESS my hand and official seal.

[Signature of Notary Public]