



STAFF REPORT

City Council
Meeting Date: 9/13/2016
Staff Report Number: 16-165-CC

Consent Calendar: **Authorize the City Manager to enter into an amended and restated lease with the Fire District for Station No. 77 located at 1467 Chilco Street**

Recommendation

Consider authorizing the City Manager to enter into a First Amended and Restated Ground Lease with the Menlo Park Fire Protection District (hereinafter, the "District") for Station No. 77 located at 1467 Chilco Street.

Policy Issues

There are no direct policy issues presented by the First Amended and Restated Ground Lease.

Background

On or about December 12, 1995, the City of Menlo Park ("City"), as Landlord, and the Menlo Park Fire Protection District ("District"), as Tenant, entered into a Ground Lease for the real property commonly known as 1467 Chilco Street, Menlo Park, California ("Chilco Street Property").

in 1998 the District completed construction of a fire station, referred to as Station 77, on the Chilco Street Property, and since that time has continuously operated Station 77 and desires to continue to occupy the Chilco Street Property for Station 77.

In or about July 2012, the City subdivided the parcel of land that included the Chilco Street Property, and sold a portion of the parcel not occupied by the District to California Family Foundation for the continued occupancy and use of Beechwood School.

As part of the subdivision of the parcel, the land occupied by the District was slightly enlarged and existing easements were abandoned and new easements were established.

The District has requested that the City extend the term of the Lease for a new term of 55 years and has requested various changes to the Lease to clean up language that is no longer applicable, and to clarify the District's intent to remodel, expand and/or rebuild the fire station to better serve the Belle Haven Neighborhood and the commercial and industrial areas East of Highway 101.

Analysis

The proposed Amended & Restated Ground Lease is for a period of fifty-five (55) years at a rent of Fifty-Five Dollars (\$55.00), or one Dollar (\$1.00) per year payable in advance on the Commencement Date. This is an extension of 21 years over the remaining 34 years for the existing lease. As a Ground Lease, the

District is responsible for all expenses of ownership and operation, including payment of taxes, insurance, capital improvements, etc.

Impact on City Resources

There is no impact on City Resources.

Environmental Review

No environmental review is required.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. First Amended and Restated Ground Lease

Report prepared by:

William L. McClure, City Attorney

FIRST AMENDED AND RESTATED GROUND LEASE

This First Amended and Restated Ground Lease (this "Lease") is made effective October 1, 2016 ("Commencement Date") between the CITY OF MENLO PARK (hereinafter "Landlord") and the MENLO PARK FIRE PROTECTION DISTRICT (hereinafter "Tenant"), and replaces that certain ground lease dated December 12, 1995, in its entirety.

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises hereinafter described upon all of the following terms and conditions:

1. **PREMISES.** The legal description of the Premises, together with all improvements and appurtenances is included in Exhibit A attached hereto and incorporated herein by this reference (the "Premises"). Any improvements existing on the Premises at the Commencement Date of this Lease shall become Tenant's property. Tenant may use, sell, demolish, remove, or otherwise dispose of the existing improvements following the Commencement Date of this Lease. Landlord shall receive no compensation for the improvements other than the performance of Tenant's covenants expressed in this Lease.

2. **TERM.** The term of this Lease shall be fifty-five (55) full calendar years. Tenant may terminate this Lease at any time, with thirty (30) days' notice.

3. **RENT.** Tenant shall pay to Landlord as rent a total of Fifty-Five Dollars (\$55.00), or One Dollar (\$1.00) per year payable in advance on the Commencement Date.

4. **TAXES; ASSESSMENTS.**

a. Tenant shall pay all real and personal property taxes (if any), general and special assessments (if any), and other charges of every description levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the land or improvements, the leasehold estate, or any sub-leasehold estate, to the full extent of installments falling due during the term, whether belonging to or chargeable against Landlord or Tenant. Tenant shall make all such payments direct to the charging authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Tenant may, at Tenant's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

b. Tenant may contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment, or charge, Tenant may withhold or defer payment or pay under protest but shall protect Landlord and the Premises from any lien by adequate surety bond or other appropriate security.

5. USE. Subject to the provisions of this Lease, Tenant shall use the Premises primarily for the operation of a fire station and may also use the Premises for fire suppression, prevention and the provision of emergency services. For the purpose of this Lease, Landlord agrees that noise generated in the normal use of Premises for fire protection purposes as well as noise associated with construction of improvements on the Premises, shall not be considered a nuisance.

6. IMPROVEMENTS.

a. Tenant may construct or cause to be constructed on the Premises (and adjacent property if desired by the Tenant) any and all improvements necessary and desirable for the operation of a fire station. Improvements may include remodel, expansion, or reconstruction of fire station existing on the Premises as well as other related buildings and improvements as of the Commencement Date. Tenant agrees to obtain all approvals required by law before construction or alternation.

b. Landlord shall, at no material cost to Landlord, cooperate with Tenant in obtaining any approvals required by law for the construction or alteration of the fire station, including but not limited to any approvals needed for development on property adjacent to the Premises. Landlord shall expeditiously process applications made by Tenant for the remodel, expansion or reconstruction of the fire station described in subsection a above, including, but not limited to any required application for a general plan amendment, zoning amendment, use permit, architectural control, lot line adjustment, lot merger, sign review, variance and heritage tree removal permit. Without limitation on its governmental powers, Landlord agrees to use good faith efforts to prioritize approvals necessary for the remodel, expansion or reconstruction of the fire station or related improvements, given the fire station's purpose of providing essential functions to the community.

c. Landlord shall grant to public entities or public service corporations, for the purpose of serving only the Premises, rights-of-way or easements on or over the Premises for poles or conduits, or both, for telephone, electricity, water, sanitary or storm sewers, or both, and for other utilities and municipal or special district services, and agrees to dedicate any portions of the Premises that may be required in connection with the construction or alteration of improvements and the operation and maintenance of the fire station on the Premises.

d. Tenant shall pay or cause to be paid the total cost and expense of all works of improvement constructed by Tenant on the Premises. Tenant agrees that it will pay, or cause to be paid, all cost of labor, services or material supplied in the prosecution of any work done, or caused to be done, on the Premises. Tenant will keep the Premises free and clear of all mechanics liens and other liens on account of work done for Tenant or person claiming under Tenant.

e. Any casualty which results in the destruction of all or a part of the improvements constructed by Tenant shall not relieve either party of its obligations under this Lease, nor shall the destruction of such improvements result in the termination of this Lease.

f. Nothing in this Section 6 shall be construed to pre-commit the City to any land use approval, general plan amendment, re-zoning, use permit, or other discretionary action, required for the expansion or reconstruction of the fire station described above.

7. MAINTENANCE; REPAIRS; OPERATIONS; RECONSTRUCTION. Throughout the term of this Lease, Tenant shall, at Tenant's sole cost and expense, maintain the Premises and improvements, if any, in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders, and regulations of federal, state, county, and municipal governmental agencies and bodies having or claiming jurisdiction over the Premises and the requirements of all insurance underwriting boards or insurance companies insuring all or part of the Premises or improvements. Nothing in this provision defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Lease to alter, modify, demolish, remove, or replace any improvement, or as limiting provisions relating to condemnation or to damage or destruction during the final year(s) of the Lease term. No devaluation, impairment, or limitation of use resulting from any event work contemplated by this Paragraph shall entitle Tenant to any offset, abatement, or reduction in rent, nor to any termination.

8. OWNERSHIP OF IMPROVEMENTS.

a. All improvements constructed on the Premises by Tenant as permitted by this Lease shall be owned by Tenant until expiration of the term or sooner termination of this Lease. Tenant is permitted to modify improvements on the Premises in its sole discretion, provided that such modifications comply with requirements set forth by the Municipal Code of the City of Menlo Park and the State of California.

b. At the expiration of the term, provided Tenant is not then in default, Tenant shall have the right to remove any or all fixtures from the Premises, provided all resultant injuries to the Premises and remaining improvements are completely remedied and Tenant complies with Landlord's reasonable requirements respecting the resultant appearance.

c. At the expiration or earlier termination of the term, Landlord shall have the right to require Tenant to remove all of the buildings and improvements constructed by Tenant and to require Tenant to restore the Premises to a bare undeveloped condition.

9. ASSIGNMENT OR SUBLEASE. This Lease is granted to the Tenant because it is a governmental body providing fire protection services to the residents of the City of Menlo Park. Tenant may not assign, sublease, or otherwise transfer Tenant's interest in this Lease to any person or entity without Landlord's prior written consent, which Landlord may withhold in its absolute discretion.

10. INDEMNITY; INSURANCE. Tenant further covenants and agrees that Tenant will carry and maintain, or cause to be carried and maintained, at its sole cost and expense, the following types of insurance:

a. Comprehensive broad form general public liability insurance coverage against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the Premises, improvements, or adjoining areas or ways, providing protection of at least Two Million Dollars (\$2,000,000) combined single limit for bodily injury or death to any one person for any one accident or occurrence and for property damage for any one accident or occurrence. Such limits of liability shall be subject to periodic adjustment based upon limits of liability commonly carried by similar projects as that operated by Tenant and/or required by comparable leases then being executed.

b. City and its officers and employees shall be named as additional insureds on District's public liability insurance

c. All insurance required by express provisions of this Lease shall be carried only in responsible insurance companies licensed to do business in the State of California having a Best Rating of A+ or better. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in a forfeiture of the insurance, (2) the insurer waives the right of subrogation against Landlord and against Landlord's agents and representatives, (3) the policies are primary and' noncontributing with any insurance that may be carried by Landlord, and (4) they cannot be canceled or materially changed except after ten (10) days' notice by the insurer to Landlord or Landlord's designated representative. Tenant shall furnish Landlord with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before the Commencement Date, Tenant shall furnish Landlord with binders representing all insurance required by this Lease. At the expiration of the term, Landlord shall reimburse Tenant pro rata for all prepaid premiums on insurance required to be maintained by Tenant, and Tenant shall assign all Tenant's rights, title, and interest in that insurance to Landlord. Tenant may effect for its own account any insurance not required under this Lease. Tenant may provide by blanket insurance covering the Premises and any other location or locations any insurance required or permitted under this Lease provided it is acceptable to all mortgagees.

d. Property insurance. Tenant shall maintain property insurance covering risks of loss covered by "Special Form" coverage including flood (but only if typically required for similarly situated properties) for 100% of the replacement value of the Premises and the Improvements (but excluding any fixtures or other leasehold improvements owned by any subtenants.

e. Tenant shall deliver to Landlord, in the manner required for notices, copies or certificates of all insurance policies required by this Lease, together with evidence satisfactory to Landlord of payment required for procurement and maintenance of the policy, within the following time limits:

f. Insurance provided for herein shall be issued by insurance companies with general policyholder's rating of not less than A+ and qualified to do business in the state where the Premises is located.

i. For insurance required at the Commencement Date, not later than ten (10) days prior to the Commencement Date;

ii. For any renewal or replacement of a policy already in existence, at least twenty (20) days before the expiration or other termination of the existing policy.

g. If Tenant fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in force and paid for, Landlord shall have the right, at Landlord's election and on ten (10) days' written notice, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as added rent due from Tenant with interest at the maximum allowable legal rate in effect in the state where the Premises are located on the date the premium, to be paid on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

h. Landlord shall not be liable, and Tenant shall defend and indemnify Landlord against all liability and claims of liability, for damage or injury to person or property on or about the Premises. Tenant waives all claims against Landlord for damage or injury to person or property arising, or asserted to have arisen, from any cause whatsoever.

11. DEFAULTS; REMEDIES.

a. Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

b. Defaults. Tenant shall be in material default under this Lease:

i. If Tenant fails to pay rent or any other charge required to be paid by Tenant when due and such failure continues for a period of twenty (20) days after written notice thereof to Tenant;

ii. If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion. However, Landlord shall not be required to give such notice if Tenant's failure to perform constitutes a non-curable breach of this Lease

iii. (a) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (b) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within one hundred twenty (120) days; (c) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's

interest in this Lease and possession is not restored to Tenant within one hundred twenty (120) days; or (d) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within one hundred twenty (120) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as additional rent, the difference between the rent (or any other consideration) paid in connection with such assignment or sublease and the rent payable by Tenant hereunder.

c. Remedies. On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

i. Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Premises are located.

d. Cumulative Remedies. Landlord's exercise of any right or remedy shall not prevent Landlord from exercising any other right or remedy.

12. FORCE MAJEURE. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Lease for the payment of rent, taxes, insurance, or obligations to pay money that are treated as rent. The causes referred to above are: Strikes, lockouts, labor disputes, failure of power, irresistible superhuman cause, acts of public enemies of this state or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease), casualties not contemplated by insurance provisions of this Lease, or other causes beyond the reasonable control of the party obligated to perform.

13. ATTORNEYS' FEES. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees. Arbitration is an action or proceeding for the purpose of this provision.

14. NOTICE. As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. Unless the provisions of this Lease on rent direct otherwise, rent shall be sent in a manner provided for giving notice.

All notices must be given in writing provided no writing other than the check or other instrument representing the rent payment itself need accompany the payment of rent.

Notice is considered given either (a) when delivered in person to the recipient named as below, or (b) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

Notice to Landlord: CITY OF MENLO PARK
ATTN: CITY MANAGER
701 LAUREL ST
MENLO PARK CA 94025

w/copy to: WILLIAM L MCCLURE, CITY ATTORNEY
1100 ALMA ST, SUITE 210
MENLO PARK CA 94025

Notice to Tenant: MENLO PARK FIRE PROTECTION DISTRICT
ATTN: FIRE CHIEF
300 MIDDLEFIELD RD
MENLO PARK CA 94025

w/copy to: MEYERS NAVE
555 12th STREET
15TH FLOOR
OAKLAND, CA 94607

Either party may, by notice given at any time or from time-to-time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

Each recipient named must be an individual person. If more than one recipient is named, delivery of notice to anyone such recipient is sufficient. If none of the recipients named in the latest designation of recipient is available for delivery in person, and if the notice addressed by mail to each recipient named in the latest designation of recipient is returned to the sender undelivered, notice shall be sufficient if sent by mail as above to the party as named in this Lease, unless the name or identity of the party has changed as permitted in this Lease and proper notice of the change has been given, in which event the notice shall be sufficient if sent by mail as above to the party named in the latest notice designating the party, and the notice is considered given when the first attempt to give notice was properly made.

15. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either party. Each party has relied on his/her/its own examination of this Lease, the counsel of his/her/its own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a

waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

16. SEVERABILITY. The invalidity or illegality of any provision shall not affect the remainder of the Lease.

17. SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

18. EXPIRATION; TERMINATION. At the expiration or earlier termination of the term, Tenant shall surrender to Landlord the possession of the Premises. Surrender or removal of improvements, fixtures, trade fixtures, and improvements shall be as directed in provisions of this Lease on ownership of improvements at termination. Tenant shall leave the surrendered Premises and any other property in good and broom-clean condition except as provided to the contrary in provisions of this Lease on maintenance and repair of improvements. All property that Tenant is required to surrender shall become Landlord's property at termination of the Lease. All property that Tenant is not required to surrender but that Tenant does abandon shall, at Landlord's election, become Landlord's property at termination.

If Tenant fails to surrender the Premises at the expiration or sooner termination of this, Lease, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender.

This Lease shall terminate without further notice at expiration of the term. Any holding over by Tenant after expiration shall not constitute a renewal or extension or give Tenant any rights in or to the Premises except as otherwise expressly provided in this Lease.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

DATED: _____, 2016

LANDLORD

CITY OF MENLO PARK

By: _____
City Manager

Attest:

CITY CLERK

DATED: _____, 2016

TENANT

MENLO PARK FIRE PROTECTION DISTRICT

By: _____
Fire Chief

EXHIBIT A

The Premises commonly known as 1467 Chilco Street, Menlo Park, CA consists of the real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

Parcel 3 as shown on that certain Parcel Map filed on December 26, 2012, in Book 80 of Parcel Maps at pages 57 – 59 in the Office of the County Recorder of San Mateo County, State of California; subject to the reservation of a 20' private utility easement for the benefit of Parcel 2, a 20' emergency vehicle access easement, and a 10' sanitary sewer easement, all as shown on the Parcel Map.

APN 055-260-240