

**AGREEMENT OF LEASE OF
KOHL PUMP HOUSE
AND ADJACENT GREENHOUSES**

THIS LEASE AGREEMENT (hereinafter Lease) is entered into this __ day of _____, 2020, in the City of San Mateo, by and between the CITY OF SAN MATEO, a municipal corporation (hereinafter City), and the SAN MATEO ARBORETUM SOCIETY, a nonprofit charitable corporation (hereinafter Society).

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. Premises Leased.

a. City hereby leases to Society and Society hereby leases from City that certain premises known as the Kohl Pump House and the Adjacent Greenhouses (hereinafter Premises), located in Central Park, San Mateo, California, shown as Area A on Exhibit A hereto.

b. Society agrees that in using the Premises it will restrict vehicular traffic to and from the Premises or into or through Central Park to only that necessary to make bulk deliveries to the Premises. Society further agrees that this traffic will enter Central Park at the 5th Avenue entrance, and that this traffic will not proceed at any speed faster than is safe for pedestrians in the vicinity and at no time shall that speed exceed 7 miles per hour.

c. Society agrees that no vehicles will be allowed to park in Central Park, including in the spaces surrounding or on the Premises, except by special permit from the City Department of Parks & Recreation or when actually delivering materials as specified in subparagraph (b) above.

2. Purposes. The Society shall use and only permit the use of the Premises for the primary purposes of providing office space for Society meetings, for holding training and educational presentations related to plant life, for the propagation and care of plants, and for other uses related to the stated goals of the Society.

3. Condition of Premises. Society agrees and understands that the City has made no warranties or representations whatsoever regarding the suitability or usability of the Premises for any use or purpose, and the Society accepts and takes the Premises under this Lease in an as-is condition.

4. Inspection of Premises. City reserves the right to enter the Premises at any and all reasonable times during the term of the Lease to inspect the Premises and to ascertain the condition of the Premises. City also reserves the right to enter upon the Premises at any time to operate and maintain the switching equipment, pump, and well, or to repair the Premises.

5. Term. The term of the Lease shall be a period of seven (7) years beginning on July 1,

2020, and ending on June 30, 2027.

6. Payment. In consideration for lease of the Premises, Society shall: 1) Pay the City the sum of \$1.00 per year for the use and occupancy of the Premises, of which the full amount for seven (7) years shall be due and payable upon the execution of the Lease; 2) Maintain the Rose Garden and adjacent Butterfly Garden which is delineated as Area B on Exhibit A, which is attached and incorporated by reference; 3) Provide, at its own expense, horticulture education programs, classes and lectures that are available and open to the public; and 4) Contribute to improvements and/or projects within Central Park connected to the mission of the Society that are mutually beneficial to the City and Society.

7. Use of the Premises. The Society may charge a reasonable fee for use of all or any part of the Premises by persons or groups other than the City to assist in defraying Society's cost of maintenance and operation. The City shall be entitled to use the Premises for scheduling programs, meetings, and activities, when such use will not conflict with activities scheduled by the Society. A monthly calendar of Premises use shall be available from the Society at all reasonable times to the City Director of Parks & Recreation or other authorized City employee.

Use of the Premises by the public when used in conjunction with other facilities in Central Park shall be facilitated through the City Department of Parks and Recreation in coordination with the Society.

8. Utilities. Society shall pay for all utility costs incurred in its operations and use of the Premises.

9. Maintenance and Repairs. Society agrees to keep and maintain the Premises and any off-Premises area that the Society is permitted to use in a clean, orderly, and sanitary condition in accordance with housekeeping standards acceptable to the City and to public health and insurance inspectors. If damage to the Premises or an area that was used by the Society (other than normal wear and tear) is caused by the Society or others under its control or by its permission except the City, Society shall promptly repair such damage at its expense. If the City causes damage to the Premises or any off-Premises area that the Society is permitted to use, then the City shall repair such damage at its expense. Upon offending party's failure to make such repairs after ten (10) days' written notice by the injured party, the injured party may cause such repairs to be made and the offending party shall be liable to the injured party for the reasonable expenses incurred by the injured party in performing the repairs.

All building and grounds assets on the Premises that were improved or constructed with funds from the Society or any such future improvements that are initiated by the Society during the term of this agreement shall be maintained by the Society. It will be the responsibility of the Society to plan for the long term capital improvement needs for these same assets. All other assets shall be the responsibility of the City. The City shall maintain these assets of the Premises consistent with the maintenance standards provided for other similar City owned facilities and the City's Building Maintenance Program. .

10. Assignment. This Lease agreement is unique and personal to the Society, and the generous terms and conditions provided in this Lease are based primarily on the Society's status as a provider of public information and programs and on the Society's performance history in the use of City facilities. Therefore, Society shall not assign this Lease or any interest in it, nor sublease all or any part of the Premises without the prior written approval of the City.

11. Indemnity. Society shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of Society's lease of the Premises or maintenance of the Premises or Area B, except for those arising out of City's sole negligence or willful misconduct. Society agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

12. Insurance. Society shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Society's operation and use of the Premises or maintenance of Area B. The cost of such insurance shall be borne by Society.

a. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California.
3. Property insurance against all risks of loss to any tenant improvements or betterments.

b. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

c. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, employees, and agents; or the Society shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its elected and appointed officials, employees, and agents are to be covered as insureds with respect to liability arising out of the ownership, maintenance or use of the Premises.
2. Society's insurance shall be primary insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, and agents shall be excess of the City's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after 30 day's prior written notice has been provided to the City.

e. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise accepted by City.

f. Verification of Coverage

Society shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by City before Lease commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

g. Damage to Premises.

City may choose to obtain insurance in its sole discretion to insure the structures on the Premises. However, this insurance shall not insure, nor shall the City be responsible for any business interruption suffered by the Society, except for damage caused by the City as described in Paragraph 9.

Society shall be responsible for obtaining insurance against loss or damage from whatever cause, including fire, theft, property damage, windstorm, riot or civil disorder, on the contents and equipment on the Premises.

In the event that during the term of this Lease, the Premises are damaged or destroyed by

fire or other calamity that prevents the occupancy of the whole or substantial portion of the Premises, this Lease may be terminated at the option of either the City or the Society, provided that the Premises cannot be restored to a reasonable occupancy level within a reasonable time after such destruction or damage. If the Premises can be restored within that reasonable time by the exercise of due diligence, the party responsible for such destruction or damage shall make that restoration. If any such partial or total destruction exceeds the insurance coverage on the Premises, then the Society may elect to terminate the Lease and not restore the Premises. Such election shall be made no later than thirty (30) days after an appraisal of the restoration costs is made.

13 Liens. Society shall keep the Premises free and clear from any liens arising out of any work performed, material or service furnished, or obligation incurred by the Society or any of its employees, members, invitees, or permittees.

14. Termination of Lease. At the expiration of the term of this Lease or sooner as provided by this Lease, the Society shall quit and surrender the Premises to the City in good condition, reasonable use and wear and damage caused by the elements without any negligence of the Society, its employees, members, invitees, or permittees excepted.

In the event that the City determines that it has need of the Premises for a broader or more important public use, but no earlier than two years after the effective date of this Lease, the City may terminate the Lease by giving six (6) months written notice of termination to the Society. After a one-year term, the Society may also terminate this Lease for any reason by giving of ninety (90) days' written notice to the City.

In addition to any other grounds for termination for breach of this Lease or as otherwise set forth in this Lease, the City shall also have the right to terminate this Lease at any time upon the occurrence of any of the following:

- a. Filing of a petition, voluntarily or involuntarily, for the adjudication of the Society as bankrupt.
- b. The making by Society of any general assignment for the benefit of creditors.
- c. The occurrence of any act by Society that operates to deprive the Society permanently of its ability to perform its obligations under this Lease.
- d. The abandonment and discontinuance of operations at the Premises by the Society.

15. Alterations. No physical changes or alterations shall be made in the Premises or any other City property without the prior written approval of the City Director of Parks & Recreation or his/her designee.

City park land and property adjacent to the Premises is not leased to Society under this

written agreement between the City and the Society in the following way:

a. Society shall give written notice of its request to renew to the City not later than 120 days before the end of the term of the Lease.

b. Should City also desire to renew, it shall give notice of granting Society's request to renew not later than thirty (30) days before the expiration of the term of the Lease. The Lease shall then be deemed renewed for an additional five-year term and all other terms and conditions of the Lease shall remain in full force and effect as provided herein.

However, it is expressly agreed and understood that this provision does not create any obligation whatsoever on either party to renew this Lease.

20. Holding Over. If the Society remains in possession of the Premises after the expiration of the term of the Lease, and without executing a new lease agreement, then such holding over shall be construed as a tenancy from month to month at sufferance, subject to all of the terms and conditions of this Lease.

21. Waste. Society shall not commit nor allow to be committed, any waste, damage, or nuisance to or on the Premises.

22. Surrender of the Premises. Upon the expiration of this Lease, Society may remove any movable equipment and appliances owned exclusively by the Society and placed by the Society on the Premises.

23. Claims. Society shall notify the City in writing of any occurrence on the Premises or Area B that involves any injury to person or property including a full description of the event, the names and addresses of all persons involved and witnesses, and with a sketch as appropriate of the circumstances of the occurrence. Society will promptly provide a copy of any claim made with regarding to any damage of any sort, including any complaints in any court regarding the claim. If City is involved in any claim that affects the Society' use of the Premises or Area B, the City will promptly notify the Society in writing of the claim.

Society agrees to cooperate and require its officers, employees, and agents to cooperate in the investigation or litigation of any claim regarding the premises.

24. Use and Disposal of Toxic or Hazardous Substances. Society shall only use or store toxic or hazardous substances on the Premises in conformance with governing Federal and State laws and regulations and only dispose of such substances in conformance with governing Federal and State laws and regulations. A copy of any and all notifications of the presence of such substance on the Premises shall be provided to the City before such substances are used or stored on or brought to the Premises, and the City shall have the right to order that any such substance no longer be used or stored on the Premises. In addition, Society shall not bring any such substance on City property unless it is to be used on the Premises.

25. Successors. The terms and conditions of this Lease shall, subject to the restrictions on subleasing and assignment contained in this Lease, apply to and bind the successors, heirs, and assigns to the Society.

26. Equal Employment and Access. Society warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither Society nor any of its officers, agents, employees, or contractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Neither Society nor any of its officers, agents, employees, or contractors shall discriminate in the use of the Premises by any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, or age, and at all times, Society shall ensure that the Premises conform to the requirements of the Americans with Disabilities Act (ADA) and Federal regulations promulgated pursuant to the ADA.

27. Possessory Interest. Society acknowledges and understands that this Lease may create a possessory interest subject to property taxation under law and that Society may be subject to the payment of taxes levied on that interest. Society agrees that it will timely pay any such taxes.

28. Waivers. Waivers of a breach or default under this Lease shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Lease.

29. Amendments. No modification, waiver, termination, or amendment of this Lease is effective unless made in writing signed by the City and the Society.

30. Severability. If any term of this Lease is held invalid by a court of competent jurisdiction, the remainder of this Lease shall remain in effect.

31. Entire Agreement. This Lease and its Attachments set forth the entire understanding between the parties.

IN WITNESS WHEREOF, the City and the Society have executed this Lease on the date above written.

SAN MATEO ARBORETUM SOCIETY:

By _____
PRESIDENT

SECRETARY

APPROVED AS TO FORM:

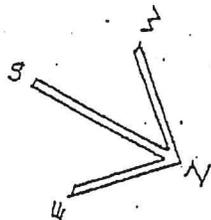
By _____
GABRIELLE WHELAN
ASSISTANT CITY ATTORNEY

CITY OF SAN MATEO:

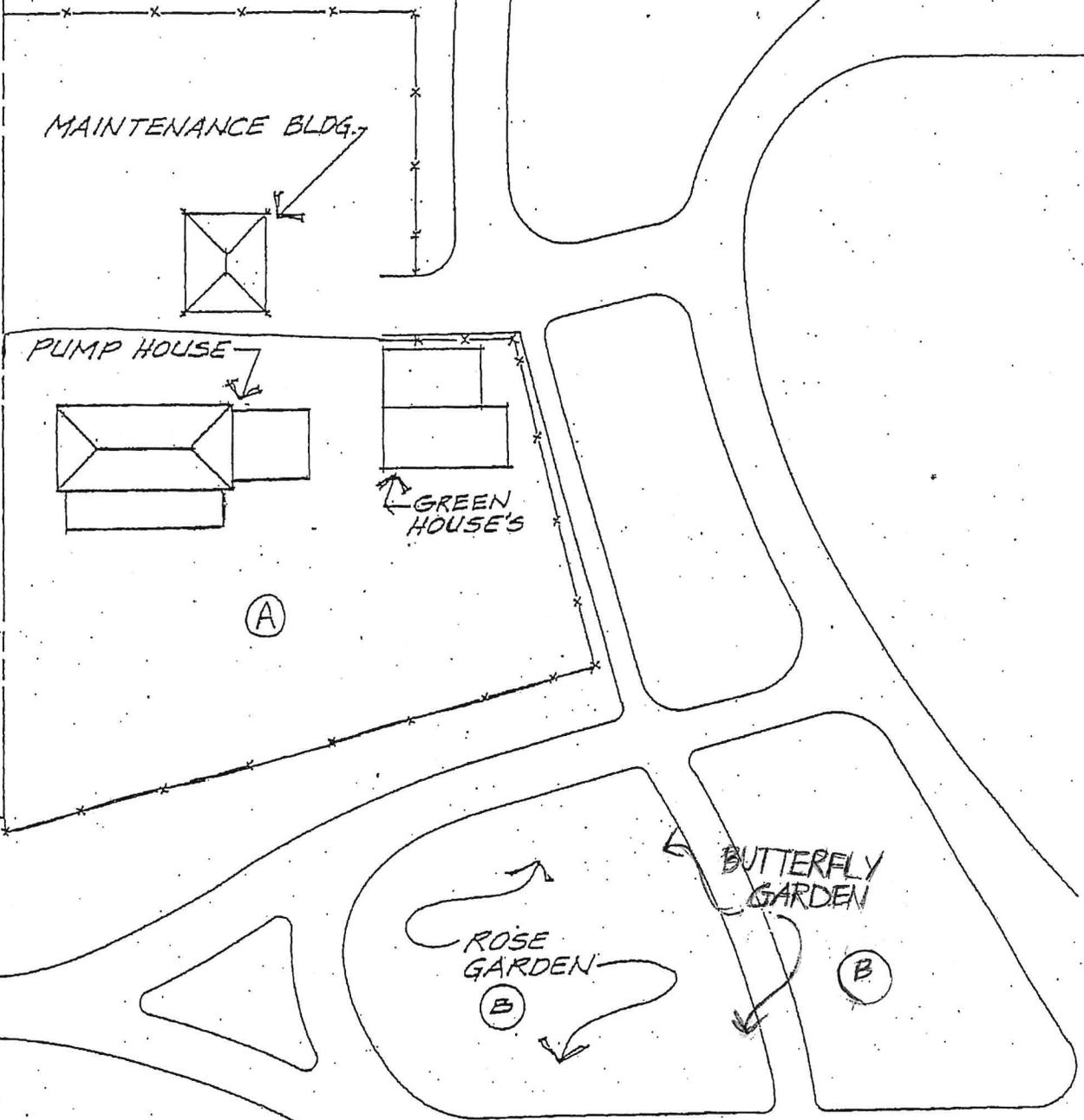
By _____
JOE GOETHALS
MAYOR

Attest _____
PATRICE OLDS
CITY CLERK

EXHIBIT A



SCALE: 1" = 40'-0"



CENTRAL PARK
PUMP HOUSE AND ROSE GARDEN AREA