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May 16, 2017

Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

SUBJECT: Updated Memorandum of Understanding with the Agricultural Institute of Marin regarding the "Christmas Tree Lot"

Dear Board Members:

RECOMMENDATION: Authorize President to execute an updated Memorandum of Understanding ("MOU") with the Agricultural Institute of Marin ("AIM").

BACKGROUND: The County released a Request for Proposal ("RFP") to operate and improve a farmers' market at the Civic Center in 2008. In June 2009, staff presented at a Board workshop an overview of the RFP, the vision plan submitted by AIM, and the recommendations from staff and the then Ad-hoc Board Subcommittee.

On July 10, 2012, your Board approved an initial MOU with AIM. Some of the significant provisions of that MOU are as follows:

- County and AIM will cooperate to design all of the Christmas Tree lot site now (inclusive of the GSA storage lot, bus transit connections area, integrations with the future SMART station, the farmers' market area, a potential future building area for AIM) with design cost shared proportionally
- County and AIM participates as partners up to \$1 million each to pave the shared portion of the Christmas tree lot and the construction of permanent restrooms which AIM will operate and can be used during Marin Center events and the Marin County Fair
- Any building would not exceed 15,000 square feet in floor area or two stories
- AIM will pay for costs around submitting a ballot measure for voter approval required by 1992 Measure A if AIM proceeds with the building vision
- County will be made whole on any revenue loss or expenses incurred for operations at new location (Christmas tree or other vendors)
- Should AIM proceed with a building, the terms for a County ground lease include \$150,000 rent annually to the County, with CPI increases
- The term of the ground lease was anticipated to be 20 years
- Should AIM wish to establish a third day for the farmers' market, it would pay for the rental at the then Board established fee schedule
- County shares in increased market revenues, if any
- The County will not have financial or legal exposure to any AIM operating deficits related to any of the Agreements
- AIM may select its own design professionals who will work together with County's design professionals at every stage of creating the design
- All iterations of the design and all design changes shall be mutually reviewed for comment and approval by both AIM and County before they become final

- AIM will be responsible for costs associated with the final project approval process, including any significant environmental review if required, that relate to the new facility or intensification of market operations

On February 24, 2014, your Board approved Resolution 2014-16 authorizing AIM to bring a ballot measure to the Marin County electorate on the June 3, 2014 primary election. The question submitted to the voters read as follows:

To enhance local farmers' contributions to our economy and provide Marin residents access to healthy, locally-grown food, shall Marin County: permit the Agricultural Institute of Marin to create a permanent home for the Farmer's Market at Marin Civic Center including a market canopy designed to respect Frank Lloyd Wright's building, accessible to pedestrians, bikes and public transit; and an eco-friendly indoor market building not to exceed 30,000 square feet at no cost to Marin taxpayers?

The measure passed and AIM has been working to design and fund the project. AIM's design team presented a new design concept from that in 2012 to a combined meeting of the Frank Lloyd Wright Civic Center Conservancy and the Cultural Services Commission on April 27, 2016. The County has hired an outside consultant (Professor Paul V. Turner, Professor Emeritus, Stanford University) recommended by the Frank Lloyd Wright Building Conservancy to consult with the Board of Supervisors and County staff on the farmers' market project design to ensure this project will not diminish the importance of the Marin County Civic Center designed by Frank Lloyd Wright. The full Board of Supervisors has yet to see and comment on the new farmers' market design, which staff and AIM will bring forward when the design stabilizes.

SUMMARY: Since approval of the ballot measure, AIM and County staff from Cultural Services, County Counsel, Public Works, Parks, and the County Administrator's Office have been in discussions regarding a more detailed MOU to document AIM's requested changes.

This non-binding MOU outlines the responsibilities of both parties in the planning and potential future construction of the Christmas Tree lot site including the farmers' market, a potential future AIM building and grounds. The MOU outlines the terms of a future ground lease, license for use of a shared parking lot with the Marin Center, revenues to the County, responsibilities for operations of the site, the design process, and implementation. It also provides for exclusivity to AIM of a farmers' market on the Civic Center Campus and the right of first refusal for AIM on any related future programs related to AIM's mission.

Some of the new significant provisions of the MOU are as follows:

- County and AIM shall participate equally to pay to pave (including utility improvements) the shared parking area Christmas tree lot, which costs have increased since 2012, and may range up to \$2.5 to \$3 million in total by both parties
- County shall pay 75% of the cost of maintaining the parking lot after construction with AIM to pay 25% of the costs, based on the expected amount of use of the parking lot
- AIM will be 100% responsible for the maintenance of the building and surrounding grounds, canopies, and temporary restrooms

- The planned building is 30,000 square feet in floor area and will be up to two stories in certain areas
- Though the shared parking lot design is not yet finalized, it is estimated it will have 190 parking spaces for vehicles (the current Christmas tree lot parks over 400 vehicles during the County Fair)
- Thirty of the 190 remaining parking spaces in the shared parking lot will be designated at all times for customers of the market building
- On Farmer's Market days during operation of the County Fair, the Farmer's Market will close at 12:00 noon
- The Parties recognize that cooperation in developing a parking management plan will be necessary in order to effectively manage the parking for patrons of both the Farmer's Market and County/Marin Center when events coincide
- The market canopy design is still being determined but may cover much of the parking area to cover stalls for approximately 180 farmers' market vendors
- Fees for use of the parking lot for the farmers' market, which are currently \$62,600 annually for the Thursday and Sunday farmers' markets, are capped at \$60,000 for the first seven years from the execution of this MOU and then increase two percent annually; this fee will not be subject to the fee schedule for use of the various Marin Center and Civic Center parking lots as periodically modified by your Board
- A third farmers' market day can be added for no additional fee
- Beginning in the fourth year after completion of the building, AIM would pay \$50,000 annually to the County, increasing by 2% starting in the fifth year; no rental payment would be due the first three years after substantial completion of the building
- County shares in increased market gross revenues, after the first \$1.3 million in revenue goes to AIM, in various "steps" as follows (the \$1.3 Break Point increases 2% annually):
 - Five percent (5%) of Gross Revenues that exceed the Break Point by at least \$100,000 but not more than \$250,000;
 - Ten percent (10%) of Gross Revenues that exceed the Break Point by at least \$250,000 but not more than \$500,000; and
 - Fifteen percent (15%) of Gross Revenues that exceed the Break Point by \$500,000
- The term of the ground lease is 40 years, with two additional, consecutive options to extend for 10 years each option by AIM
- Upon completion of the term, as may be extended, the County is required to issue a request for proposals if it is going to continue the use of the site as a farmers' market
- AIM may construct the project in two phases; the first phase being the shared parking lot and covered canopies (including restrooms), with the second phase being the building and surrounding site improvements and landscaping
- If constructed in phases, AIM will need to raise the entire funds required for Phase 1 prior to construction start; if the entire project is constructed at the same time, AIM may borrow up to \$4 million of the anticipated \$24 million project cost but would need to raise all the remaining funds prior to start of construction
- Both parties will work collaboratively to cause events at the Site and Marin Center to complement and not compete with each other: AIM's events will be mission related and on a smaller scale than Marin Center events, consistent with AIM's mission and Marin County voter approval

- In order to insure parking compatibility with Marin Center events, AIM will not schedule an event at the new building which reasonably will attract more than 75 attendees, without County's prior approval which will not unreasonably be withheld, and the Parties will work together cooperatively to accommodate their mutual needs
- County shall provide two years written notice of termination of the Lease and Use Agreement at the end of the Lease and Use Term and any extensions
- If AIM has not raised sufficient funds to build both phases of the Project by July 1, 2020, regardless of whether AIM elects to phase the Project, the Lease will terminate, unless extended by a written agreement signed by both Parties. Notwithstanding the foregoing, if AIM has raised at least fifteen million (\$15,000,000) by July 1, 2020, the County will agree to extend the termination date one year to July 1, 2021 for AIM to raise the remaining funds
- AIM will be responsible for costs associated with the final project approval process, including environmental review if required, that relate to the new facility or intensification of market operations: County will share proportionally in the cost of environmental review related to the shared parking lot

County staff has recommended these changes and this MOU in the spirit of partnering with AIM to share the risks of development and initial operations. This MOU would be implemented through various future agreements for the Christmas Tree lot site. Environmental review would be completed by AIM, with County's input, as part of bringing forward either of those agreements.


The MOU with AIM represents our ongoing support of our County's agricultural heritage, a targeted industry in Marin County, and continues our relationship with AIM and the Civic Center farmers' market. It is an example of the use of public-private partnerships to help enhance our public facilities for the benefit of our residents.

FISCAL IMPACT: The Board has set aside a designated reserve of \$1 million which would be used in part to match any AIM funding for the construction of the Christmas Tree lot shared parking. In addition, the County has set aside additional funds in the annual Capital Improvement Program, and anticipates the need for additional funds in future years to reconfigure the GSA parking lot and the additional costs associated with constructed the shared parking lot with AIM and related project costs.


Please let us know if you have any questions or concerns.

REVIEWED BY:	<input type="checkbox"/> Finance	<input checked="" type="checkbox"/> N/A
	<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
	<input type="checkbox"/> Human Resources	<input checked="" type="checkbox"/> N/A

Respectfully submitted,



Matthew H. Hymel
County Administrator



Gabriella Calicchio
Director, Cultural Services

cc: David Speer, Facilities Planning and Development Manager
Jenna Brady, Deputy County Counsel