

RECORDING REQUESTED BY:

City of Cupertino

AND WHEN RECORDED MAIL TO:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: Vanessa S. Legbandt, Esq.

[Space above for Recorder's use.]

This document is recorded for the benefit of the City of Cupertino
and recording is fee-exempt under §27383 of the Government
Code and Revenue and Tax Code §11929.

SITE LEASE

by and between

**CITY OF CUPERTINO,
as Lessor**

and

**CUPERTINO PUBLIC FACILITIES CORPORATION,
as Lessee**

Dated as of October 1, 2020

Relating to

\$_____

**CITY OF CUPERTINO
2020A CERTIFICATES OF PARTICIPATION**

SITE LEASE

This SITE LEASE, is dated as of October 1, 2020, and entered into by and between the CITY OF CUPERTINO, a municipal corporation and a general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California, as lessor (the "City"), and the CUPERTINO PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "Corporation");

WITNESSETH:

WHEREAS, the City and the Corporation have heretofore entered into a Lease Agreement, dated as of May 1, 2012 (the "2012 Lease Agreement"), pursuant to which the Corporation agreed to lease to the City certain real property and improvements located thereon; and

WHEREAS, the City has previously executed and delivered its \$43,940,000 Certificates of Participation (2012 Refinancing Project) (the "Refunded Certificates"), which Refunded Certificates evidenced fractional interests in lease payments to be made under and pursuant to the terms the 2012 Lease Agreement; and

WHEREAS, in order to prepay the 2012 Lease Agreement and to defease and refinance the Refunded Certificates, the City and the Corporation have agreed to enter into this Site Lease (the "Site Lease") wherein the City will lease the real property described in Exhibit A hereto and the existing improvements thereon (the "Leased Premises") to the Corporation; and

WHEREAS, the Corporation intends to lease back to the City the Leased Premises pursuant to a Lease Agreement to be executed and entered into as of the date hereof (the "Lease"); and

WHEREAS, by resolutions the City and the Corporation have agreed to execute this Site Lease, and to deliver it upon performance and compliance by each party with all terms or conditions of this Site Lease to be performed concurrently herewith, including, without limitation, the delivery of the City of Cupertino 2020A Certificates of Participation (the "Certificates") evidencing fractional interests in Lease Payments (as defined in the Trust Agreement) to be made by the City under this Lease, executed and delivered pursuant to a Trust Agreement, dated as of the date hereof (the "Trust Agreement"), by and among the City, the Corporation, and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of the Site Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the Site Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE LEASED PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. All terms not otherwise defined herein shall have the definitions given such terms in the Trust Agreement.

Section 2. Lease. The City hereby leases to the Corporation and the Corporation hereby leases from the City, on the terms and conditions hereinafter set forth, the Leased Premises; provided that the Lease is duly executed and delivered by the parties hereto simultaneously herewith.

Section 3. Term. The term of this Site Lease shall commence as of the date of execution and delivery of the Certificates and shall remain in effect until the later of July 1, 2030 or the Term, as defined in the Lease, expires as provided therein, unless such term is sooner terminated as provided in the Lease; provided, however, that in the event of a default by the City under the Lease and the Corporation's election to terminate the Lease under Section 9.2(b) thereof, the term of this Site Lease shall not terminate until such time as all amounts payable by the City under the Lease and the Trust Agreement have been paid in full.

Section 4. Rental. The Corporation, and any assignee or successor in interest of the Corporation under this Site Lease, shall pay to the City a single rental payment of \$_____, from proceeds of sale of the Certificates, by causing such amount to be deposited in the Escrow Fund under and as further specified in the Trust Agreement.

Section 5. Purpose. The Corporation shall use the Leased Premises solely for the purpose of leasing back such Leased Premises to the City pursuant to the Lease and for such purposes as may be incidental thereto; provided, that in the event of default by the City under the Lease or termination pursuant thereto, the Corporation may exercise the remedies of repossession of the Leased Premises, as provided in the Lease.

Section 6. Interest in Leased Premises. The City warrants and covenants that it has sufficient interest in the Leased Premises to lease it hereunder. In the event of a title defect in the Leased Premises that impairs the right to use and occupy the Leased Premises, the City covenants that it will exercise its power, including but not limited to, its condemnation powers to the extent permitted by law, to obtain the necessary rights in the Leased Premises and to cure such defect and limitation of the right to use and occupancy.

Section 7. Assignments and Subleases. The City acknowledges and affirms the assignment by the Corporation of its rights under this Site Lease to the Trustee, under the terms of the Assignment Agreement dated as of the date hereof, for the benefit of the Owners of the Certificates. This Site Lease may also be assigned and the Leased Premises subleased, as a whole or in part, by the Corporation without necessity of obtaining the consent of the City, if any event of default occurs under the Lease.

Section 8. Termination. The Corporation agrees, upon the termination of this Site Lease, to quit and surrender the Leased Premises in the same good order and condition as the same was in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Leased Premises at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the City, without the necessity of any additional document of transfer.

Upon payment by the City of all Lease Payments and all Additional Payments due during the term of the Lease, and concurrently with termination of the Lease as provided therein, the term of this Site Lease shall terminate.

Under no circumstances may the City terminate this Site Lease as a remedy for a default by the Corporation in the performance of any obligation of the Corporation hereunder.

Section 9. Quiet Enjoyment. The Corporation at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Premises; provided, however, that the City shall have the right to demolish some or all of the existing improvements on the Leased Premises in order to replace or renovate some or all of the existing improvements with new improvements of equivalent or greater value.

Section 10. Default. In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following written notice and demand for correction thereto by the City, the City may exercise any and all remedies granted by law; provided, however, that no merger of this Site Lease and the Lease shall be deemed to occur as a result thereof and, so long as any Certificates and Additional Certificates are outstanding, the Site Lease shall not be terminated except as provided in Section 8 hereof.

Section 11. Taxes. Subject to the provisions of Section 7.6 of the Lease, the City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Premises.

Section 12. Eminent Domain. In the event the whole or any part of the Leased Premises is taken by eminent domain proceedings, the interest of the Corporation shall be recognized and is hereby determined to be the amount of unpaid Lease Payments and all Additional Payments due the Corporation under the Lease.

Section 13. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 14. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 15. Representatives. Whenever under the provisions of this Site Lease the approval of the Corporation or the City is required, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given for the City by the City Representative, and for the Corporation by the Corporation Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 16. Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope of intent of any provision or Section of this Site Lease.

Section 17. Execution in Counterparts. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 18. Amendments. This Site Lease may be amended in writing as may be mutually agreed by the City and the Trustee (as assignee of the Corporation), in accordance with Article X of the Trust Agreement.

Section 19. Incorporation. This Site Lease shall be subject to all the terms and conditions of the Lease.

Section 20. Warranties of the City as to the Leased Premises. The City covenants and warrants to the Corporation that:

(a) except for Permitted Encumbrances (as defined in the Lease), the Leased Premises is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the financing as contemplated by the Lease;

(b) all taxes, assessments, or impositions of any kind with respect to the Leased Premises, except current taxes, have been paid in full;

(c) the Leased Premises is properly zoned for its intended purposes; and

(d) the Leased Premises is necessary to the City in order for the City to perform its governmental functions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have caused this Site Lease to be executed by their duly authorized officers as of the date and year first above written.

CITY OF CUPERTINO, as lessor

By: _____
Steven Scharf
Mayor

ATTEST:

Kirsten Squarcia
City Clerk

CUPERTINO PUBLIC FACILITIES
CORPORATION, as lessee

By: _____
Steven Scharf
President

ATTEST:

Kirsten Squarcia
Secretary

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the Leased Premises conveyed under the foregoing to the Cupertino Public Facilities Corporation (the "Corporation"), a nonprofit public benefit corporation duly organized under and by virtue of the laws of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Corporation, pursuant to authority conferred by resolution of the said Corporation Board of Directors adopted on September 15, 2020, and the Corporation consents to recordation thereof by its duly authorized officer.

Dated: October __, 2020

CUPERTINO PUBLIC FACILITIES
CORPORATION

By: _____
Steven Scharf
President

ATTEST:

Kirsten Squarcia
Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

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.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

LOT 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO. 3743 CUPERTINO TOWN CENTER, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 16, 1964, IN BOOK 186 OF MAPS, PAGE(S) 36 AND 37

PARCEL TWO:

PARCELS A, B, C & D, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP, BEING ALL OF LOT 4, TRACT NO. 3743, CITY OF CUPERTINO", WHICH PARCEL MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 07, 1974 IN BOOK 337 OF MAPS, PAGE 11.

APN 369-31-033