

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.

TERMINATION AGREEMENT

by and among

CITY OF CUPERTINO,

CUPERTINO PUBLIC FACILITIES CORPORATION,

And

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

Dated as of October 1, 2020

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (this “Agreement”) is dated as of October 1, 2020 and effective as of the date of recordation hereof, by and among the CITY OF CUPERTINO, a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the “City”), 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 (the “Corporation”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized under the laws of the United States of America, as trustee under the Trust Agreement (defined below) (the “2012 Trustee”).

RECITALS:

WHEREAS, the City, as lessor, and the Corporation, as lessee, entered into that certain Site and Facility Lease, dated as of May 1, 2012 (the “2012 Site Lease”), which was recorded on May 22, 2012 as Instrument No. 21677688 in the Official Records of the County of Santa Clara, State of California (the “Official Records”), pursuant to which the City leased certain property and facilities described therein (as described in Exhibits A and B hereto) (the “Property”) to the Corporation; and

WHEREAS, the Corporation, as lessor, and the City, as lessee, entered into that certain Lease Agreement, dated as of May 1, 2012 (the “2012 Lease Agreement”), as referenced in that certain Memorandum of Lease Agreement, dated as of May 1, 2012, by and between the City and the Corporation, which was recorded on May 22, 2012 as Instrument No. 21677689 in the Official Records, pursuant to which the Corporation leased the Property back to the City for the purpose of refunding the City’s then-outstanding Certificates of Participation (2002 Refinancing and Capital Improvement Project) (the “2002 Certificates”); and

WHEREAS, pursuant to the 2012 Lease Agreement, the Corporation made available to the City a portion of the proceeds of the City of Cupertino Certificates of Participation (2012 Refinancing Project) in the original aggregate principal amount of \$43,940,000 in order to refinance the 2002 Certificates; and

WHEREAS, the Corporation has assigned its interest in the 2012 Site Lease and the 2012 Lease Agreement to the 2012 Trustee pursuant to that certain Assignment Agreement, dated as of May 1, 2012 (the “2012 Assignment Agreement”), by and between the Corporation, as assignor, and the 2012 Trustee, as assignee, which was recorded on May 22, 2012 as Instrument No. 21677690 in the Official Records; and

WHEREAS, the City has notified the Corporation of its intention to prepay and defease, on October __, 2020 (the “Defeasance Date”), all principal components of the Lease Payments (as such term is defined in the Trust Agreement, dated as of May 1, 2012 (the “2012 Trust Agreement”), by and among the City, the Corporation and the 2012 Trustee); and

WHEREAS, the City hereby certifies that it has caused to be delivered moneys, which, together with the investment proceeds thereof as described in the 2012 Certificates Escrow Agreement, dated as of October 1, 2020, by and between the City and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”), will be sufficient to pay the

principal components of the Lease Payments maturing after the Defeasance Date and accrued interest with respect thereto (collectively, the “Defeasance Amount”), to the Escrow Agent, in order to defease all Lease Payments on the Defeasance Date; and

WHEREAS, in order to facilitate the defeasance of the Lease Payments the City and the Corporation now desire to terminate and discharge the 2012 Site Lease and the 2012 Lease Agreement and the Corporation and the 2012 Trustee now desire to terminate and discharge the 2012 Assignment Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Termination of 2012 Site Lease, 2012 Lease Agreement, and 2012 Assignment Agreement. Effective as of the date of recordation of this Agreement, (a) the Corporation and the City hereby acknowledge and agree that the 2012 Site Lease and 2012 Lease Agreement shall be terminated and discharged, and shall be of no further force or effect and (b) the Corporation and the 2012 Trustee hereby acknowledge that the 2012 Assignment Agreement shall be terminated and discharged, and shall be of no further force and effect.

2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement. The signature and acknowledgment pages from each counterpart may be removed and attached to a single document in order to create one original instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, this Agreement has been executed by each party's respective duly authorized officers, as of the date first above written.

CITY OF CUPERTINO

By: _____
Steven Scharf
Mayor

ATTEST:

Kirsten Squarcia
City Clerk

CUPERTINO PUBLIC FACILITIES
CORPORATION

By: _____
Steven Scharf
President

ATTEST:

Kirsten Squarcia
Secretary

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as 2012 Trustee

By: _____
Eladia Burgos
Authorized Officer

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

SIGNATURE OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

On _____ before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis
of satisfactory evidence to be the person(s) whose names(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

On _____ before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis
of satisfactory evidence to be the person(s) whose names(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

EXHIBIT A

DESCRIPTION OF THE PROPERTY

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 7, 1974 IN BOOK 337 OF MAPS, AT PAGE 11.

APN: 369-31-033

ARB: 371-02-044, 43, 43.1, 432, 433

EXHIBIT B

DESCRIPTION OF THE PROPERTY

The Property consists of the following facilities located on the Site:

City Hall and Administrative Offices: two story office building; 23,040 sq. ft., built 1965; reinforced concrete, fully sprinklered. Insured value: \$6.2 million (structure only)

Cupertino Community Hall /City Council Chambers: one story multi- purpose building; 6,516 sq. ft., built 2004; wood frame structure, fully sprinklered.

Cupertino Library: two story, special purpose building (Class A); 53,864 sq. ft., built 2004; steel frame structure, fully sprinklered.