

## **RESOLUTION NO. 19-XXX**

### **A RESOLUTION OF THE CUPERTINO CITY COUNCIL**

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING AN AMENDED AND RESTATED AGREEMENT FOR LEASE OF REAL PROPERTY (WATER SYSTEM) WITH SAN JOSE WATER COMPANY**

WHEREAS, the production, treatment, and distribution of potable water within the Cupertino Municipal Water System area is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino; and

WHEREAS, the City Council of the City of Cupertino enacted provisions of the Municipal Code, in part, to satisfy applicable potable water safety and health requirements; and

WHEREAS, the City Council adopted on September 2, 1997 by Council Resolution 9950 the original Agreement for Lease of Real Property (Water System); and

WHEREAS, pursuant to the proposed Amended and Restated Agreement for Lease of Real Property (Water System), included as attachment C to the staff report for this Resolution and incorporated herein by this reference, ("Amended Lease") all operations of the Cupertino Municipal Water System are provided by a private water utility operator collector pursuant to the terms of the Amended Lease and Cupertino Municipal Code; and

WHEREAS, the City does not provide water system services, rather the private water utility has agreed to protect public health, safety and welfare and comply with applicable laws; and

WHEREAS, as the lessee of the Cupertino Municipal Water System, San Jose Water Company, is responsible for all operations of the system including repair, maintenance, operation, customer service, rate setting, billing, emergency service and water quality testing; and

WHEREAS, pursuant to the terms of the Amended Lease, San Jose Water Company has the responsibility to operate the Cupertino Municipal Water System

in a manner similar to that in which it operates in own systems and to maintain the leased system in accordance with specified operational standards; and

WHEREAS, pursuant to the terms of the Amended Lease, San Jose Water Company has the responsibility to make certain capital investments up to \$5 million in the Cupertino Municipal Water System before the Amended Lease expires in October 2022; and

WHEREAS, pursuant to the terms of the Amended Lease, when rate setting for customers of the Cupertino Municipal Water System, the private water utility is solely responsible for setting and collecting such rates and charges at a level at or below the authorized amount set by the California Public Utilities Commission in effect on SJWC's regulated water system located within Cupertino; and

WHEREAS, the City has determined that the Amended Lease is not a project under CEQA because it has no potential for resulting in a physical change in the environment, but even if it were, it would be exempt from environmental review pursuant to the exemption in 14 Cal. Code Regs. §15601(b)(3) in that it can be seen with certainty that there is no possibility that this action will have a significant effect on the environment because approval of the Amended Lease merely clarifies the standards of operation of the system and the procedures for establishing water rates, which are technical changes concerning the general administration of the lease of property and does not commit the City to a definite course of action, so this is not an activity subject to CEQA. Environmental review will be conducted as necessary for any changes to the water system that may be agreed upon in the future; and

WHEREAS, the City Council, using its independent judgment, before taking action on this Resolution, determines that the action is not a project and/or exempt from CEQA for the reasons stated above; and

WHEREAS, each and every customer and owner of real property within the Cupertino municipal water system was notified of a public hearing scheduled on the Amended Lease by U.S. mail prior to said public hearing; and

WHEREAS, a public hearing notice regarding the Amended Lease was posted on the City's website on November 5, 2019; and

WHEREAS, all documentation to support consideration of this Amended Lease was placed on file with the City Clerk for public inspection and review; and

WHEREAS, at its regular meeting on December 17, 2019, the City Council held a duly noticed public hearing to consider the Amended Lease; and

WHEREAS, at the public hearing, interested persons had the opportunity to testify regarding the Amended Lease; and

WHEREAS, the City Council of the City of Cupertino finds and determines as follows:

1. The above recitals are true and correct and material to the adoption of this Resolution.

2. Pursuant to the Amended Lease between the City and San Jose Water Company, the public's written comments and testimony received at this public hearing, and the staff report and information presented at the hearing, the City Council hereby determines that the Agreement for Lease of Real Property (Water System) adopted by Council Resolution 9950 on September 2, 1997 should be restated and amended.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino, does hereby:

1. Approve the Amended and Restated Agreement for Lease of Real Property (Water System) with San Jose Water Company.
2. Authorize the Mayor to execute the Amended Lease.
3. Authorize the City Manager or his/her designee to take all action as may be reasonably necessary to effectuate the Amended Lease.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 17th day of December, 2019, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST: _____ Grace Schmidt, City Clerk	_____ Date