

RESOLUTION NO. 21-XXX

A RESOLUTION OF THE CUPERTINO CITY COUNCIL

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A FIRST AMENDMENT TO THE 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 ("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, the City Council adopted on December 17, 2019, by Council Resolution 19-145 the Amended and Restated Agreement for Lease of Real Property (Water System) ("Amended Lease"); and

WHEREAS, pursuant to the Amended Lease all operations of the Water System are provided by a private water utility, lessee San Jose Water Company, pursuant to the terms of the Amended Lease and Cupertino Municipal Code; and

WHEREAS, pursuant to the terms of the Amended Lease, the term Amended Lease will expire on September 30, 2022 ("Term"); and

WHEREAS, the City wishes to ensure it has sufficient time to pursue a new lease agreement pursuant to Section 10061 of the Public Utilities Code and to potentially transition to a new lessee or to an alternate form of operation of the Water System before the Term expires; and

WHEREAS, pursuant to the terms of the First Amendment of the Amended Lease, the City at its sole discretion may either choose to not extend the Term, or to extend the Term by one, two or three years; and

WHEREAS, pursuant to the terms of the First Amendment of the Amended Lease, no other terms are changed except that in the event the Term is extended, there will be a commensurate extension of lessee's obligations for Capital Improvement Funds, with reference to Section 7 of the Amended Lease; and

WHEREAS, the City has determined that the First Amendment of 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 First Amendment to the Amended Lease merely provides a mechanism for extending the Term of the Lease with a commensurate extension of the expenditure requirements for Capital Improvements Funds, 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 has further determined that the First Amendment of the Amended Lease is exempt from CEQA under CEQA Guidelines section 15301, which exempts from CEQA review any project that "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use"; 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, the public was notified of a public hearing scheduled on the First Amendment to the Amended Lease by published notice in the *Cupertino Courier* beginning two weeks prior to the public hearing; and

WHEREAS, a public hearing notice regarding the First Amendment to the Amended Lease was also posted on the City's website on October 22, 2021; and

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

WHEREAS, at its regular meeting on November 2, 2021, the City Council held a duly noticed public hearing to consider the First Amendment to the Amended Lease; and

WHEREAS, at the public hearing, interested persons had the opportunity to testify regarding the First Amendment of 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. Based on consideration of the First Amendment of 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 Amended and Restated Agreement for Lease of Real Property (Water System) adopted by Council Resolution 19-145 on December 17, 2019, should be amended as set forth in the First Amendment thereto.

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

1. Approve the First Amendment to Amended and Restated Agreement for Lease of Real Property (Water System) with San Jose Water Company.

2. Authorize the City Manager to execute the First Amendment.

3. Authorize the City Manager or his/her designee to take all action as may be reasonably necessary to effectuate the First Amendment.

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 First Amendment to the Amended and Restated Agreement for Lease of Real Property (Water System) 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.

BE IT FURTHER RESOLVED that this Resolution is exempt from CEQA under CEQA Guidelines section 15301 because it consists of the leasing of existing public facilities.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of the City of Cupertino this 2nd day of November, 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date