



TOWN OF FAIRFAX

STAFF REPORT

December 7, 2016

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager GT
Michael Vivrette, Finance Director

SUBJECT: Adoption of a resolution authorizing the substitution of the "Women's Club" (aka Council Chambers) to replace the Pavilion that currently serves as security for a Solar Panel Lease Agreement as required for the Certificates of Participation (COPs) refinancing for certain Town CalPERS retirement obligations

RECOMMENDATION

Adopt a resolution authorizing the substitution of the "Women's Club" (aka Council Chambers) to replace the Pavilion that currently serves as security for a Solar Panel Lease Agreement (i.e., solar panels on the Pavilion roof) dated as of August 1, 2008 (the "2008 Lease") as required for the Certificates of Participation (COPs) refinancing for certain Town CalPERS retirement obligations.

DISCUSSION

In November 2016, the Council approved the use of the Pavilion, as one of several properties, to secure a new lease financing transaction (COPs) to refinance portions of the Town's CalPERS obligations (the "CalPERS Lease"). As the Pavilion currently is encumbered to serve as security for the 2008 Lease for solar panels, it is required to "free-up" the Pavilion so it can serve as security for the new larger CalPERS Lease transaction. The Women's Club functions as the Council Chambers which serves an essential purpose for the Town and, therefore, meets the criteria to serve as security for the existing 2008 Lease.

The 2008 Lease transaction is between the Town and Municipal Finance Corporation ("MFC") with an assignment of lease payments to City National Bank ("CNB"). Both MFC and CNB have consented to the substitution of the properties as security for the 2008 Lease. Terms of the 2008 Lease transaction, other than those required to effect the property substitution, will not be changed.

This substitution of properties will enable the Town and its financing team to proceed with the CalPERS Lease financing transaction.

FISCAL IMPACT

The 2008 lease agreement was a financing mechanism for the solar panels. The annual lease payment is \$16,600 based on 0% interest for 15 years. There is an approximate balance of \$100,000 remaining to be paid after the Town pays the December lease payment.

ATTACHMENTS

Resolution

RESOLUTION 16- ____

**RESOLUTION AMENDING CERTAIN LEASE FINANCING
DOCUMENTS TO SUBSTITUTE THE PROPERTY TO BE
ENCUMBERED THEREBY AND AUTHORIZING AND DIRECTING
CERTAIN ACTIONS WITH RESPECT THERETO**

RESOLVED, by the Town Council (the "Council") of the Town of Fairfax (the "Town"), as follows:

WHEREAS, the Town and the Municipal Finance Corporation (the "Corporation") have heretofore entered into that certain Lease Agreement, dated as of August 1, 2008 (the "Lease Agreement"), pursuant to which the Town leased certain real property, described in Exhibit A thereto (the "Property"), to the Corporation, the Corporation leased the Property from the Town, Corporation leased the Property back to the Town and the Town subleased the Property from the Corporation;

WHEREAS, the Corporation and City National Bank (the "Assignee") have heretofore entered into that certain Amendment of Lease Agreement, dated as of August 1, 2008 (the "Assignment Agreement"), pursuant to which the Corporation assigned to the Assignee its rights under the Lease Agreement and its right to receive lease payments made by the Town under the Lease Agreement;

WHEREAS, the Town has determined to substitute the Property that is the subject of the Lease Agreement and the Assignment Agreement and that it is necessary to amend the description of the Property in such documents to describe the substitute property;

WHEREAS, the leased Property is better known as the "Pavilion" and the property to be substituted is better known as the "Women's Club" which functions as the Town Council chambers; and

WHEREAS, the document below specified has been filed with the Town and the members of the Town Council, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

Section 1. A first amendment to the Lease Agreement, in the form on file with the Town Clerk, be and is hereby approved, and the Mayor, the Town Manager or the Finance Director, or the assignee of any such official, is hereby authorized and directed to execute said document, with such non-substantive changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval, and the Town Clerk is hereby authorized and directed to attest to such official's signature.

Section 2. The Mayor, the Town Manager the Finance Director and the Town Clerk, or the assignee of any such official, and all other appropriate officials of the Town

are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

Section 3. This Resolution shall be in full force and effect immediately upon its adoption.

The foregoing Resolution was duly introduced and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 7th day of December 2016, by the following vote, to wit:

AYES:
NOES:
ABSENT:

Mayor

Attest: _____
Michele Gardner, Town Clerk

AFTER RECORDATION RETURN TO:

Quint & Thimmig LLP
900 Larkspur Landing Circle, Suite 270
Larkspur, CA 94939-1726
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

FIRST AMENDMENT TO LEASE AGREEMENT

(Amending that certain Lease Agreement, dated as of August 1, 2008, by and between the Municipal Finance Corporation and Town of Fairfax, California)

Dated as of December 1, 2016

by and between the

MUNICIPAL FINANCE CORPORATION, as Lessor

and

TOWN OF FAIRFAX, CALIFORNIA, as Lessee

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT, dated as of December 1, 2016, is by and between the MUNICIPAL FINANCE CORPORATION, a corporation organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the TOWN OF FAIRFAX, CALIFORNIA, a municipal corporation and general law city duly organized and existing under the laws of the State of California, as lessee (the "Town"), amending that certain Lease Agreement, dated as of August 1, 2008, by and between the Corporation and the Town, recorded on August 28, 2008, as document number 2008-0040316, in the Official Records of Marin County, California (the "Lease Agreement");

WITNESSETH:

WHEREAS, the Corporation and the Town have heretofore entered into the Lease Agreement, pursuant to which the Town leased certain real property, described in Exhibit A thereto (the "Property"), to the Corporation, the Corporation leased the Property from the Town, Corporation leased the Property back to the Town and the Town subleased the Property from the Corporation;

WHEREAS, the Corporation and City National Bank (the "Assignee") have heretofore entered into that certain Amendment of Lease Agreement, dated as of August 1, 2008, recorded on August 28, 2008, as document number 2008-0040317 (the "Assignment Agreement"), pursuant to which the Corporation assigned to the Assignee its rights under the Site Lease and the Lease Agreement and its right to receive lease payments made by the Town under the Lease Agreement;

WHEREAS, the Town has determined to substitute the Property that is the subject of the Lease Agreement and the Assignment Agreement and that it is necessary to amend the description of the Property in such documents to describe the substitute property; and

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Amendment of the Lease Agreement.

(a) The existing description of the Property contained in the Lease Agreement is set forth in Exhibit A attached hereto (the "Original Description").

(b) The description of the Property contained in the Lease Agreement is hereby amended by deleting the Original Description and replacing it with the replacement description set forth in Exhibit B attached hereto (the "New Description").

(c) By virtue of such replacement, the Corporation hereby leases to the Town and the Town hereby leases from the Corporation, the Property, as now described by the New Description.

SECTION 2. Execution in Counterparts. This First Amendment to Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 3. Applicable Law. This First Amendment to Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Corporation and the County have caused this First Amendment to Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year First above written.

MUNICIPAL FINANCE CORPORATION

By _____
William A. Morton
President

TOWN OF FAIRFAX

By _____
Garrett Toy
Town Manager

Attest:

Michele Gardner
Town Clerk

[NOTARY ACKNOWLEDGMENTS TO BE ATTACHED]

EXHIBIT A

ORIGINAL DESCRIPTION

The Property consists of the following described land located in Marin County, State of California, together with all buildings, facilities and other improvements which constitute real property and which are located thereon at any time during the term of this lease:

PARCEL ONE:

Lot 38, as shown upon that certain Map entitled "Map of Frustuck and Wreden Subdivision of Fairfax Park", filed for record January 8, 1914 in Volume 4 of Maps, at Page 64, Marin County Records.

PARCEL TWO:

A PORTION OF LOT 39, described as follows:

BEGINNING at a point on the Northeasterly line of Park Avenue, distant thereon 50 feet Southeasterly from the point formed by the intersection of the Northeasterly line of Park Avenue, with the Southeasterly line of Elsie Lane; running thence Northeasterly 104.7 feet along the Northwesterly line of lot 39, of the Frustuck and Wreden Subdivision of Fairfax; thence Southeasterly along the Northeasterly line of said Lot, 26 1/2 feet; thence Southwesterly 105 feet to a point on the Northeasterly line of Park Avenue, distant 75 feet Southeasterly from the Southeasterly line of Elsie Lane; and thence Northwesterly 25 feet to the point of beginning.

BEING the Northwesterly one-half of Lot 39 of the Frustuck and Wreden Subdivision of Fairfax Park, as shown upon that certain map entitled, "Map of Frustuck and Wreden Subdivision of Fairfax Park, Fairfax, Marin County, California", filed for record January 8, 1914 in Volume 4 of Maps, at Page 64, Marin County Records.

EXHIBIT B

NEW DESCRIPTION

The Property consists of the following described land located in Marin County, State of California, together with all buildings, facilities and other improvements which constitute real property and which are located thereon at any time during the term of this lease:

[LEGAL DESCRIPTION OF THE WOMAN'S CLUB, 46 POARK ROAD, FAIRFAX, TO COME]