



## CITY ATTORNEY'S OFFICE

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### CITY COUNCIL INFORMATIONAL MEMORANDUM

December 6, 2023

To: Cupertino City Council

From: Kristina Alfaro, Director of Administrative Services

Re: Cupertino Public Facilities Corporation Questions

#### Background

The Cupertino Public Facilities Corporation (CPFC) was established on June 2, 1986 as tax-exempt corporation under Internal Revenue Code section 501(c)(4) to issue debt on behalf of the City.

The City of Cupertino, City Council acts as the CPFC's board of directors. Following Resolution 12-01, the Mayor, Vice Mayor, and City Clerk are automatically seated as the President, Vice President, and Secretary of the Board, respectively. CPFC's bylaws assigns the City's Director of Administrative Services as the Treasurer.

The board has met on 11 occasions since its establishment, with one meeting cancellation for lack of business, on the following dates:

1. June 2, 1986 – Passed Articles of Incorporation (Attachment A), Bylaws (Attachment B), Elected Officers, set date and meeting time of regular meetings and authorized filing of exemptions to the State Franchise Tax Board and various Federal Forms and issued Certificates of Participation (COP). COP is a municipal financing tool used to generate funds to acquire real property or to construct or improve public facilities. COP use a tax-exempt lease-financing agreement, where the investors are paid via lease revenues generated from the property. Per California State law, properly structured COP are not debt and therefore do not require voter approval.
2. July 20, 1987 – Elected officers, set date and meeting time of regular meetings to the second Tuesday in November at seven o'clock p.m.
3. November 16, 1987 – Elected Officers and set new date and meeting time of regular meetings to the third Monday in November at seven o'clock p.m. (Attachment C)

4. February 16, 1988 – Authorized execution of grant of easement to Pacific Gas and Electric Company
5. March 1, 1993 – Refinancing of Certificates of Participation
6. September 16, 2002 – Issuing Certificates of Participation
7. April 17, 2012 – Adopted resolution 12-01 appointing Cupertino City Council members as Board of Directors of the Public Facilities Corporation and approved refinancing of certificates of participation.
8. October 6, 2015 – Cancelled due to lack of business.
9. January 19, 2016 -- Approved the City entering into Antenna Ground Lease Agreement with GTE Mobilnet of California
10. July 5, 2017 – Approved the City to entering into Antenna Ground Lease Agreement with New Cingular Wireless
11. September 15, 2020 – Refinancing of Certificates of Participation
12. October 6, 2020 – Approved the minutes of the September 15, 2020 meeting.

*Public Facilities Corporation bylaws and Articles of Incorporation*

At the corporation’s first meeting in 1986, its Bylaws were adopted, these Bylaws set forth the provisions which the corporation operates under, including but not limited to the election of directors, regular meetings, objects and purpose of the corporation, and general provisions.

In addition, the corporation adopted its Articles of Incorporation, which state the purpose for which the corporation was formed.

Lastly, the corporation authorized filings with both the State and Federal governments for recognition as a 501(c)(4) tax-exempt corporation.

*Debt Issued and Reporting Requirements*

The corporation has authorized debt issuance on the following occasions, with the most recent issuance in 2020, a refinancing of the 2012 Certificates of Participation. The refinancing resulted in annual savings of approximately half a million dollars for the remaining 10 years of the debt. Additional details can be found in the Fiscal Year 2020-21 Mid-Year Report (Attachment J) and Debt Schedules (Attachment K).

<i>Debt Issuance Date</i>	<i>Certificates of Participation for:</i>	<i>Debt Principal Amount</i>
<i>July 16, 1986</i>	<i>1986 Series A for City Hall and Library</i>	<i>\$9,800,000</i>
<i>July 11, 1989</i>	<i>Wilson Park Project</i>	<i>\$5,000</i>
<i>April 2, 1990</i>	<i>Memorial Park Expansion Project (for the Sports Center Acquisition)</i>	<i>\$9,070,000</i>

<i>Debt Issuance Date</i>	<i>Certificates of Participation for:</i>	<i>Debt Principal Amount</i>
<i>March 14, 1991</i>	<i>Blackberry Farm and Fremont Older Elementary School Site (now Creekside Park)</i>	<i>\$32,970,000</i>
<i>November 24, 1992</i>	<i>Refunding of Series A City Hall and Library Projects</i>	<i>\$10,785,000</i>
<i>November 24, 1992</i>	<i>Refunds the 1989 Wilson Park and 1990 Memorial Park</i>	<i>\$14,585,000</i>
<i>March 22, 1993</i>	<i>Refunding Series A Blackberry Farm and Fremont Older projects</i>	<i>\$36,600,000</i>
<i>October 1, 2002</i>	<i>Refunds the Series A and Series B and issues and provides funding for the new library</i>	<i>\$56,640,000</i>
<i>April 19, 2012</i>	<i>Refinance the Oct 1 2002 debt at a lower interest rate</i>	<i>\$43,940,000</i>
<i>September 29, 2020</i>	<i>Refinance the 2012 at a lower interest rate</i>	<i>\$22,040,000</i>

There are regulatory reports and actions to maintain the 501(c)(4) status along with debt reporting and compliance requirements. Those requirements and the City's current status is shown in the table below:

Requirement	Activity	Status
Internal Revenue Service- Annual Federal Reporting (Form 990)	Regulatory Reporting	Outside counsel unsuccessfully attempted to exempt CPFC from filing in 2016 (Attachment I). The Corporation is currently working with subject matter experts to reestablish 501(c)(4) and will begin Form 990 filing shortly afterward.
Franchise Tax Board- Annual State Filing (Form 199)	Regulatory Reporting	The corporation stopped filing after 2001 when it was determined that the corporation was exempt from filing.
State Controller's Office – Annual Transaction Report (Attachment D)	Regulatory Reporting	Independent external auditors have continued to prepare and submit reports with City staff review.
Secretary of State – Statement of Information (Attachment G)	Regulatory Reporting	The City maintains its state tax-exempt status and will file the Statement biannually in June on even years.
Annual Meeting of the Board of Directors	Corporate Compliance	Staff is tentatively proposing future meetings occur in November.

Insurance Coverage (Attachment H)	Debt Issuance Compliance	The City has continued to maintain the minimum general liability and rental interruption coverage.
Bank New York Mellon (BNYM) -Statement of the City	Debt Issuance Reporting	The City has provided BNYM current Statement and supplement documents.

*Conclusion*

The City is in compliance with all State filings and debt issuance requirements.

The lapse of annual federal reporting (Form 990) has resulted in the revocation of CPFC's 501(c)(4) status. There is no material impact on the City's debt issuance due to a lapse in reporting as the City has not received a disbursement from the debt since 2002 when additional debt was issued for the Library and Community Hall. In addition, the Corporation has not met regularly as prescribed by the Bylaws. Based on the most recent Resolution on meeting dates, City staff will schedule an annual meeting on the third Monday in November, or November 18, 2024.

*Next Steps*

City staff is working with subject matter experts to regain CPFC's 501(c)(4) status and bring into federal reporting compliance. Expected completion for filing is early next calendar year. Staff will update City Council once CPFC has regained 501(c)(4) status. Following reacquiring 501(c)(4) status and Form 990 filings, staff will work with subject matter experts to reattempt exempting CPFC from filing Form 990 in future years.

Staff is drafting internal reporting procedures to ensure that reporting and annual meetings are not missed in the future. For debt issuance, the City will continue to work with UFI Inc. to ensure the required annual reporting is met.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Any additional expenditures needed to come into compliance will be assumed within existing budget appropriations.

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Prepared by: Jonathan Orozco, Finance Manager

Reviewed by: Kristina Alfaro, Director of Administrative Services

Matt Morely, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

- A – Cupertino Public Facilities Corporation Articles of Incorporation
- B – Cupertino Public Facilities Corporation Bylaws
- C – Cupertino Public Facilities Corporation Resolution 87-4 Appointing Time and Meeting Place of Regular Meetings
- D – Financial Transactions Report FY2021-22
- E – Cupertino Public Facilities Corporation all other resolutions
- F – Cupertino Public Facilities Corporation Minutes
- G – Cupertino Public Facilities Corporation Entity Status Letter
- H – Cupertino Public Facilities Corporation Insurance and Appropriations Compliance
- I – Form 990 Exemption Request Submittal
- J – Fiscal Year 2020-21 Mid-Year Financial Report
- K – Debt Schedules