

THIS TERMINATION AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY ("Termination Agreement") is entered into _____, 2017 by the City of San Pablo ("**Seller**" or "**City**") and Capital Partners Development Company LLC ("**Buyer**").

RECITALS

A. The City is the owner of certain real property located at 13831 San Pablo Avenue in the City of San Pablo, which is more particularly described in Exhibit A-1, which is the current City Hall site (the "**Property**").

B. The City also owns that certain real property located on Gateway Avenue in the City of San Pablo comprised of approximately 2.50 acres and constituting a portion of that parcel identified by Assessor's Parcel Number 417-310-005, and which property is currently undeveloped (the "**Gateway Property**").

C. On or about June 14, 2016, the City published a joint Request for Qualifications and Request for Proposals ("**RFQ/RFP**"), inviting interested parties to submit qualifications and proposals to purchase and redevelop the Property with commercial and residential uses (the "**Redevelopment Project**"), and to design and construct new city hall facilities on the Gateway Property (the "**City Hall Project**") as part of the consideration for the purchase of the Property.

D. The City received four proposals and based on the proposals, presentation, interview and references, determined that Capital Partners Development Company, LLC ("**Buyer**") best demonstrated the experience, expertise and qualifications necessary to carry out both the Redevelopment Project and the City Hall Project.

E. Pursuant to City Council Resolution 2017-126 dated June 19, 2017, the parties entered into an Agreement for the Purchase and Sale of Real Property and Joint Escrow Instructions that was executed on August 3, 2017 (the "**Agreement**") for the City to sell the Property to Buyer for the Purchase Price of \$2,500,000 for the Redevelopment Project and Buyer to design and construct the City Hall Project, on the Gateway Property for a price of \$14,950,000. The Buyer did not deposit the \$100,000 Deposit with the Escrow Holder.

F. The parties continued to negotiate the details of the City Hall Contract, the form of which was approved as Exhibit C to the Agreement.

G. On August 15, 2017, the City of San Pablo Planning Commission approved a major design review for the New City Hall.

H. On September 5, 2017, the City Council of the City of San Pablo approved the design, site plan and interior and exterior conceptual plans for the New City Hall.

I. Although Buyer continued to work on the plans and construction documents, on September 28, 2017, Buyer notified Seller that it could not execute the City Hall Contract and could not carry out either the City Hall Project nor the Redevelopment Project, but wanted to provide all of its plans and construction documents for the City Hall Project to the City, which was confirmed by a memorandum dated October 5, 2017.

J. In consideration of the mutual covenants and agreements contained in this Termination Agreement, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties agree as follows on the termination of the Agreement:

AGREEMENT

1. **Definitions.** The definitions used in this Termination Agreement have the same meaning as defined and used in the Agreement.

2. **Purchase and Sale.** Buyer has stated that the Seller is not in default of the Agreement or any other agreement between the parties; that Buyer wants to terminate the Purchase and Sale Agreement; and that Buyer will not execute the City Hall Contract.

3. **Deposit and Liquidated Damages.** Pursuant to Sections 3, 4 and 10 of the Agreement, the parties agree as follows:

- a. Buyer warrants that it has compensated all of consultants and contractors who prepared plans, specifications and all other materials and that it has ownership of these materials, including any copyrighted materials; that Buyer assigns ownership of such plans, specifications, materials and copyrights to Seller; and Buyer agrees to execute any additional documents necessary to effectuate the purposes of this provision. The plans that Buyer will be providing Seller are:
 - i. Architectural
 - ii. Structural
 - iii. Civil
 - iv. Landscape
 - v. Mechanical
 - vi. Electrical

- b. Seller plans to use these plans, specifications and other materials to proceed with the City Hall Project. Seller acknowledges that such documents have not been completed; nor reviewed for accuracy and proper content; and will not be submitted for permit review in its current form. All design team members including the Architect, Landscape Architect, Civil Engineer, Structural Engineer, Geo-Tech and other such design team participants have no further contractual or legal obligations as to the development, completeness or accuracy of all design work, reports, testing and other such work that is turned over to the City. The City shall at the City's sole risk use such design work, reports, testing and any other work done by the Buyer or on the Buyer's behalf.
- c. Seller waives any requirement for a Deposit, but Buyer shall be responsible for costs due the Escrow Holder, if any.

4. **Seller's and Buyer's Obligations.** Upon execution and performance of all of the terms of this Termination Agreement, Seller shall have no obligation to sell Property to Buyer and Buyer shall have no obligation to buy Property from Seller and the Parties release and waive any and all claims against each other, their officials, officers, employees and agents for failure to effectuate the Agreement. However, Buyer agrees to hold harmless, indemnify and defend Seller from any claim, lawsuit or liability brought by any employee, agent, consultant or contractor of Buyer arising from the Agreement or this Termination Agreement. Buyer also agrees to indemnify and hold Seller and the Property harmless from any liens filed or otherwise claimed, in connection with any work, labor, and/or materials performed on or furnished by, through or under Seller. Such obligations on the Buyer shall survive this Termination Agreement.

5. **Buyer's Representations and Warranties.** As a material inducement to Seller, Buyer represents and warrants to Seller that, as of the Effective Date of this Termination Agreement:

(a) Buyer is duly organized, validly existing, in good standing in the State of California and this Termination Agreement is enforceable against Buyer in accordance with its terms;

(b) The individuals executing this Termination Agreement on behalf of Buyer have been duly authorized to execute and deliver this Termination Agreement on behalf of Buyer.

(c) Buyer is a licensed broker and Buyer warrants to Seller that no real estate agents or other brokers have been involved in negotiating this transaction or the execution of the Agreement or Termination Agreement on Buyer's behalf. To the extent that any broker or agent claims to be entitled to a commission, fee, or other form of compensation relating to the negotiation, execution or implementation of this Agreement, Buyer shall pay all such commissions, fees or other compensation, and Buyer hereby agrees to indemnify, defend, and hold Seller harmless from and against all claims for commissions, fees, or compensation in connection with this transaction.

6. **Notices**. Any notice pursuant to this Termination Agreement shall be given as set forth in the Agreement.

7. **Severability**. If any term, covenant, or condition of this Termination Agreement or the application of them to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Termination Agreement or the application of the terms, covenants, and conditions to Persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term, covenant, or condition of this Termination Agreement will be valid and be enforced to the fullest extent permitted by law if the purposes of this Termination Agreement can still be effected.

8. **Entire Agreement**. This Termination Agreement supersedes and cancels any and all prior or contemporaneous negotiations, arrangements, representations and understandings, oral or written, if any, between the Parties.

9. **Binding Effect**. The provisions of this Termination Agreement will be binding on and will inure to the benefit of Buyer, Seller, and their respective heirs, executors, administrators, successors, and to the extent permitted hereunder, assigns, and shall run with the land.

10. **Recordation**. This Termination Agreement may, at the option of either Party, be filed of record in the County Records of the County in which the Property is located.

11. **Applicable Law**. This Termination Agreement will be interpreted and construed under and governed by the laws of the State of California.

12. **Attorneys' Fees**. In any legal action brought to interpret, enforce the performance of any term or condition of this Agreement, or to recover damages for the breach of this Termination Agreement, as between Seller and Buyer, the

prevailing Party therein will be entitled to recover from the other Party, as an element of its costs of suit and not as damages, reasonable attorneys' fees and costs from the Party not prevailing. The prevailing Party shall be the Party who is entitled to costs of suit, whether or not suit proceeds to final judgment.

13. **Counterparts**. This Termination Agreement may be executed in two or more counterparts, each of which will be deemed an original and all, taken together, will constitute one and the same instrument.

14. **Facsimile/pdf Signatures**. In order to expedite the transaction contemplated herein, facsimile and/or .pdf signatures may be used in place of original signatures on this Termination Agreement. Seller and Buyer intend to be bound by the signatures on the electronically transmitted document, are aware that the other Party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

IN WITNESS WHEREOF, the undersigned have executed this Termination Agreement as of the date(s) and year set forth below.

"SELLER"

Dated _____

CITY OF SAN PABLO, a California municipal corporation,

By: _____

APPROVED AS TO FORM:

By: _____

"BUYER"

Dated _____

CAPITAL PARTNERS DEVELOPMENT COMPANY, LLC a California limited liability company

By: _____

Title: _____

EXHIBIT A-1

Legal Description of the Property



LEGAL DESCRIPTION
CITY OF SAN PABLO REMAINDER PARCEL

REAL PROPERTY IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, BEING PORTIONS OF THE PARCELS DESCRIBED IN THE DEEDS TO THE CITY OF SAN PABLO, RECORDED OCTOBER 19, 1975, IN BOOK 8059 OF OFFICIAL RECORDS, PAGE 147, NOVEMBER 12, 1982, IN BOOK 11005 OF OFFICIAL RECORDS, PAGE 741 AND MAY 15, 1985, IN BOOK 12317 OF OFFICIAL RECORDS, PAGE 275, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID CITY OF SAN PABLO PARCEL 8059 O.R. 147;

THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL SOUTH 48° 00' 00" EAST, 136.81 FEET TO THE TRUE POINT OF BEGINNING;

THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE EXTERIOR BOUNDARY OF SAID PARCELS, THE FOLLOWING SIXTEEN (16) COURSES;

1. SOUTH 48° 00' 00" EAST, 307.43 FEET,
2. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 65.00 FEET, THROUGH A CENTRAL ANGLE OF 85° 19' 43", AND ARC DISTANCE OF 96.80 FEET,
3. SOUTH 52° 40' 17" EAST, 1.59 FEET TO A POINT ON THE WESTERLY LINE OF CHURCH LANE,
4. THENCE ALONG SAID WESTERLY LINE, SOUTH 36° 15' 00" WEST, 253.93 FEET,
5. THENCE LEAVING SAID WESTERLY LINE, NORTH 71° 15' 00" WEST, 58.74 FEET,
6. NORTH 24° 45' 00" WEST, 35.41 FEET,
7. NORTH 56° 45' 00" WEST, 68.64 FEET,
8. NORTH 83° 45' 00" WEST, 42.24 FEET,
9. NORTH 78° 15' 00" WEST, 44.22 FEET,
10. NORTH 49° 15' 00" WEST, 51.48 FEET,
11. NORTH 84° 00' 00" WEST, 34.32 FEET,
12. NORTH 54° 30' 00" WEST, 67.91 FEET,
13. NORTH 47° 30' 00" WEST, 162.52 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID PARCEL 8059 O.R. 147,
14. THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 42° 00' 00" EAST, 119.40 FEET MORE OR LESS TO A POINT DISTANT THEREON SOUTH 42° 00' 00" WEST, 287.00 FEET FROM SAID MOST NORTHERLY CORNER OF PARCEL 8059 O.R. 147,
15. THENCE PARALLEL WITH SAID NORTHEASTERLY LINE (8059 O.R. 147), SOUTH 48° 00' 00" EAST 136.81 FEET AND

16. PARALLEL WITH SAID NORTHWESTERLY LINE, NORTH 42° 00' 00" EAST,
287.00 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 154,962 SQUARE FEET MORE OR LESS.

THE PLAT ATTACHED HERETO AND BY THIS REFERENCE IS MADE A PART OF
THIS DESCRIPTION.

Patrick M. Rei



P:\projects\19800\DWGS\SURVEY\PLAT.dwg 6/27/17

SAN PABLO AVENUE

S48°00'00"E

POINT OF COMMENCEMENT

136.81

307.43'

TRUE POINT OF BEGINNING

287.00

N42°00'00"E

N42°00'00"E 287.00'

136.81'

S48°00'00"E

119.40'

L10

L9

L8

L7

L6

L5

L4

L3

L2

C1
L1

CHURCH LANE
S36°15'00"W 253.93'

CITY OF SAN PABLO
8059 O.R. 147,
11005 O.R. 741 &
12317 O.R. 275

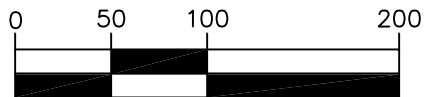
CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH
C1	65.00	85°19'43"	96.80

LINE TABLE

LINE	BEARING	DISTANCE
L1	<i>S52°40'17"E</i>	1.59
L2	<i>N71°15'00"W</i>	58.74
L3	<i>N24°45'00"W</i>	35.41
L4	<i>N56°45'00"W</i>	68.64
L5	<i>N83°45'00"W</i>	42.24
L6	<i>N78°15'00"W</i>	44.22
L7	<i>N49°15'00"W</i>	51.48
L8	<i>N84°00'00"W</i>	34.32
L9	<i>N54°30'00"W</i>	67.91
L10	<i>N47°30'00"W</i>	162.52

GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

REFERENCE

DESCRIPTION

PLAT TO ACCOMPANY LEGAL DESCRIPTION

CITY OF SAN PABLO PARCEL

SAN PABLO

CALIFORNIA

KISTER, SAVIO & REI, INC
LAND SURVEYORS - CIVIL ENGINEERS

825 SAN PABLO AVENUE
PINOLE, CA. 94564

PHONE: (510) 222-4020

FAX (510) 222-3718

FOR: CITY OF SAN PABLO

DATE: 6-14-17

JOB No. 19800

SCALE:

DWG No. **PLAT**