

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Jones Hall,
A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Juan M. Galvan, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11929 OF THE REVENUE AND TAXATION CODE AND IS EXEMPT FROM THE CITY OF SAN JOSE REAL PROPERTY CONVEYANCE TAX AND REAL PROPERTY TRANSFER TAX PURSUANT TO SAN JOSE MUNICIPAL CODE SECTIONS 4.58.060 AND 4.59.060. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE LEASE

This SITE LEASE (this "**Site Lease**"), dated for convenience as of April 1, 2022, is between the CITY OF SAN JOSE, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, as lessor (the "**City**"), and the CITY OF SAN JOSE FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California, as lessee (the "**Authority**").

BACKGROUND:

1. The Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City and the Redevelopment Agency of the City of San José (the "**Former Agency**"), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "**Act**"), and is authorized pursuant to Article 4 of the Act to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City and the Former Agency and the Authority has heretofore determined to adopt and implement a program under which the Authority will provide financing for certain public capital improvements for the City.

2. The Former Agency, as of February 1, 2012, has been dissolved and the City has become the successor agency of the Former Agency pursuant to Part 1.85 of Division 24 of the California Health and Safety Code and per California Health and Safety Code Section 34178(b)(3), the joint exercise of powers agreement establishing the Authority remains in effect.

3. The City previously issued its City of San José Special Hotel Tax Revenue Bonds, Series 2011 (Convention Center Expansion and Renovation Project) in the original aggregate principal amount of \$107,425,000 (the “**2011 CCFD Bonds**”) for the purpose of financing a portion of the cost of the first phase of the expansion of and renovations to the Convention Center (the “**Convention Center Expansion and Renovation Project**”), which bonds are secured by a pledge of Special Taxes.

4. The Authority previously issued its City of San José Financing Authority Lease Revenue Bonds, Series 2011A (Convention Center Expansion and Renovation Project) in the original aggregate principal amount of \$30,985,000 (the “**2011A Lease Revenue Bonds**”), for the purpose of financing a portion of the cost of the Convention Center Expansion and Renovation Project, which bonds are secured, in part, by a pledge of Special Taxes on a basis subordinate to the pledge thereof to the 2011 CCFD Bonds.

5. In 2013, the Authority issued its Tax-Exempt Lease Revenue Commercial Paper Notes in the aggregate principal amount of \$10,000,000, to assist the City with financing a portion of the Convention Center Expansion and Renovation Project, which notes are no longer outstanding.

6. In 2017, the Authority issued its Taxable Lease Revenue Commercial Paper Notes in the aggregate principal amount of \$15,000,000 (collectively, together with all Taxable Lease Revenue Commercial Paper Notes subsequently issued by the Authority to refinance such notes, the “**Exhibit Hall Commercial Paper Notes**”) to assist the City with financing, on an interim basis, certain public capital improvements of the City, consisting of lighting and ceiling upgrades to the exhibit hall of the Convention Center and certain related costs (the “**Exhibit Hall Project**”).

7. The Exhibit Hall Commercial Paper Notes are outstanding in the aggregate principal amount of \$8,432,437.

8. In 2018, the Authority issued its Taxable Lease Revenue Commercial Paper Notes in the aggregate principal amount of \$42,400,000 (collectively, together with all Taxable Lease Revenue Commercial Paper Notes subsequently issued by the Authority to refinance such notes, the “**South Hall Commercial Paper Notes**”) to assist the City with financing, on an interim basis, the purchase of certain real property in the City commonly known as the San José Convention Center South Hall and payment of certain related costs (the “**South Hall Acquisition Project**”).

9. The South Hall Commercial Paper Notes are outstanding in the aggregate principal amount of \$42,400,000.

10. The Exhibit Hall Project and the South Hall Acquisition Project constitute Facilities.

11. The outstanding 2011 CCFD Bonds are subject to optional redemption in full on any date at a redemption price equal to the principal amount of 2011 CCFD Bonds to be redeemed plus accrued but unpaid interest to the redemption date, without premium, and the City wishes to refund the outstanding 2011 CCFD Bonds.

12. The outstanding 2011A Lease Revenue Bonds are subject to optional redemption on any date at a redemption price equal to the principal amount of 2011A

Lease Revenues Bonds to be redeemed plus accrued but unpaid interest to the redemption date, without premium, and the City and the Authority wish to refund the outstanding 2011A Lease Revenue Bonds.

13. The City and the Authority wish to also refund the outstanding Exhibit Hall Commercial Paper Notes and the South Hall Commercial Paper Notes.

14. To that end, the City has proposed to lease to the Authority certain real property described in Appendix A attached hereto and by this reference incorporated herein and the improvements thereon, initially consisting of the Convention Center (but excluding the South Hall Acquisition Project) (the "**Leased Property**"), under this Site Lease, in consideration of the payment by the Authority of an upfront rental payment (the "**Site Lease Payment**") which is sufficient to provide funds for the refunding of the outstanding 2011 CCFD Bonds, 2011A Lease Revenue Bonds, Exhibit Hall Commercial Paper Notes and South Hall Commercial Paper Notes.

15. The Authority has authorized the issuance of its City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2022A (Convention Center Refunding Project) in the aggregate principal amount of \$[PAR] (the "**2022A Bonds**") under an Indenture of Trust dated as of April 1, 2022 (the "**Indenture**"), between the Authority and Wilmington Trust, National Association, as trustee (the "**Trustee**"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with this Site Lease.

16. In order to provide revenues that are sufficient to enable the Authority to pay debt service on the 2022A Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of April 1, 2022 (the "**Lease**"), a memorandum of which has been recorded concurrently herewith, under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

17. The Lease Payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the 2022A Bonds under an Assignment Agreement dated as of the date hereof, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

18. The City Council is the legislative body of the Convention Center Facilities District.

19. Under Chapter 5.5 (commencing with Section 5450) of Division 6 of Title 1 of the California Government Code, a pledge of collateral by any public body to secure, directly or indirectly, the payment of the principal or redemption price of, or interest on, any bonds shall be valid and binding in accordance with the terms of the pledge document from the time the pledge is made for the benefit of the pledgees and successors thereto.

20. In order to further secure the 2022A Bonds, the City, for and on behalf of the Convention Center Facilities District, and the Authority have entered into a Pledge Agreement dated as of April 1, 2022 (the "**Pledge Agreement**"), pursuant to which the City, for and on behalf of the Convention Center Facilities District, has agreed to, among other things, levy and collect Special Taxes to make Lease Payments required to be paid by the City to the Authority under the Lease, as permitted under to Section 14.32.300 of

the Chapter and Section 53313.5(g) of the Mello-Roos Act, and has pledged a lien and security interest in the Special Taxes that are collected by the City to the payment of such Lease Payments under Section 5451 of the California Government Code to the extent provided in the Pledge Agreement for the purpose of satisfying the City's obligation to make Lease Payments under the Lease.

A G R E E M E N T :

In consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

SECTION 1. *Lease of Property to Authority.* The City hereby leases the Leased Property to the Authority and the Authority hereby leases the Leased Property from the City, on the terms and conditions hereinafter set forth.

SECTION 2. *Term; Possession.* The term of this Site Lease commences on the Closing Date and ends on May 1, 20__, or, if Additional Bonds have been issued under the Indenture, the last day that precedes the final maturity of Additional Bonds (if later than May 1, 20__). If on May 1, 20__, or on such later date determined pursuant to the preceding sentence, the Indenture shall not be discharged by its terms, then the Term of this Site Lease shall be extended until 10 days after the Indenture shall be discharged by its terms, except that the Term of this Site Lease shall in no event be extended beyond May 1, 20__, or the date that is 10 years after such later date determined pursuant to the preceding sentence. If prior to May 1, 20__, or such later date the Indenture shall be discharged by its terms, then the Term of this Site Lease shall terminate 10 days after such discharge. The provisions of this Section 2 are subject in all respects to any other provisions of this Site Lease relating to the termination hereof.

SECTION 3. *Rental.* The Authority shall pay to the City as and for rental of the Leased Property hereunder, the sum of \$[Purchase Price] (the "**Site Lease Payment**"). The Site Lease Payment is due and payable upon the issuance of the 2022A Bonds and the execution and delivery hereof, and will be paid from the proceeds of the 2022A Bonds. The Authority and the City hereby find and determine that the total amount of the Site Lease Payment does not exceed the fair market value of the leasehold interest in the Leased Property which is conveyed hereunder by the City to the Authority. No other amount of rental is due and payable by the Authority for the use and occupancy of the Leased Property under this Site Lease.

As provided in Section 3.02 of the Indenture, a portion of the proceeds of the 2022A Bonds will be applied to make the Site Lease Payment by (i) the Trustee depositing the 2022 Bond proceeds it receives from the Original Purchaser in the Costs of Issuance Fund, (ii) the wire by the Original Purchaser of a portion of such proceeds to the 2011 CCFD Bonds Trustee for deposit in the Escrow Fund established under the Refunding Instructions (2011 CCFD Bonds), (iii) the wire by the Original Purchaser of a portion of such proceeds to the 2011A Lease Revenue Bonds Trustee for deposit in the Escrow Fund established under the Refunding Instructions (2011A Lease Revenue Bonds) and (iii) the wire by the Original Purchaser of a portion of such proceeds to the Commercial Paper Notes Trustee for deposit in accordance with the Payment Instructions (Exhibit Hall Commercial Paper Notes and South Hall Commercial Paper Notes).

SECTION 4. *Leaseback to City.* The Authority shall lease the Leased Property back to the City under the Lease.

SECTION 5. *Assignments and Subleases.* Unless the City is in default under the Lease, the Authority may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, except as provided in the Assignment Agreement and in the Lease, without the prior written consent of the City.

SECTION 6. *Substitution, Release or Addition of Property.* If the City exercises its option under Section 3.2 of the Lease to substitute property for the Leased Property in whole or in part, such substitution shall also operate to substitute property for the Leased Property which is leased hereunder. If the City exercises its option under Section 3.3 of the Lease to release a portion of the Leased Property from the Lease, such substitution shall also operate to release such portion of the Leased Property hereunder. If the City exercises its option under Section 3.4 of the Lease to add additional property to the property leased under the Lease, such addition shall also operate to add such property to the Leased Property hereunder. The description of the Leased Property which is leased under the Lease shall conform at all times to the description of the Leased Property which is leased hereunder.

SECTION 7. *Right of Entry.* The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 8. *Termination.* The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property shall remain thereon and title thereto shall vest thereupon in the City for no additional consideration.

SECTION 9. *Default.* If the Authority defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and no such remedy may include termination hereof; *provided, however,* that so long as the Lease remains in effect, the Lease Payments payable by the City under the Lease shall continue to be paid to the Trustee.

SECTION 10. *Quiet Enjoyment.* The Authority at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and subject only to Permitted Encumbrances (as that term is defined in the Indenture).

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Authority and on the part of the City are solely their respective corporate liabilities as public entities, and the City and the Authority hereby release each and every member and officer of the other party of and from any personal or individual liability under

this Site Lease. No member or officer of the Authority and the City or their respective governing boards shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Authority or the City hereunder.

SECTION 12. *Taxes.* The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property or any improvements thereon is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid Lease Payments payable under the Lease and the balance of the award, if any, shall be paid to the City.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by email, telecopy, telex or other form of telecommunication, as set forth below. Notice shall be effective either (a) upon transmission by email, telecopy, telex or other form of telecommunication, confirmed by telephone, (b) 2 Business Days after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the Authority
or the City:*

City of San José
Finance - Debt Management
200 East Santa Clara Street, 13th Floor
San José, California 95113-1905
Attention: Director of Finance
Telephone: (408) 535-7010
Email: debt.management@sanjoseca.gov

If to the Trustee:

Wilmington Trust, National Association
650 Town Center Drive, Suite 800
Costa Mesa, California 92626
Attention: Corporate Trust

SECTION 16. *Amendment of this Site Lease.* The Authority and the City may at any time amend or modify any of the provisions of this Site Lease, but only (a) with the prior written consent of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to make cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds;
- (ii) to amend any provision hereof relating to the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest under the Code on Bonds the interest of which is intended to be exempt from federal income taxation, in the opinion of Bond Counsel;
- (iii) to conform to any amendment of the Indenture which is made thereto in accordance with Section 9.01 of the Indenture; or
- (iv) for the purpose of effectuating any substitution, release or addition of property under Section 6.

SECTION 17. *Governing Law.* This Site Lease shall be construed in accordance with and governed by the Constitution and laws of the State of California.

SECTION 18. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary under this Site Lease with all rights of a third party beneficiary.

SECTION 19. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 20. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

SECTION 21. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same lease. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

SECTION 22. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Indenture.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, the City and the Authority have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF SAN JOSE, as lessor

By _____
Julia H. Cooper
Director of Finance

Attest:

City Clerk

**CITY OF SAN JOSE FINANCING
AUTHORITY, as lessee**

By _____
Julia H. Cooper
Treasurer

Attest:

Secretary

Approved as to form:
Nora Frimann, City Attorney

By: _____
Rosa Tsongtaatarii
Senior Deputy City Attorney

[Signature Page to Site Lease]

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APPENDIX A
DESCRIPTION OF THE LEASED PROPERTY