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# LEASE AGREEMENT

Dated as of April 1, 2022

between the

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

and the

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

Relating to

**[\$[PAR]]**  
**City of San José Financing Authority**  
**Taxable Lease Revenue Bonds, Series 2022A**  
**(Convention Center Refunding Project)**

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# LEASE AGREEMENT

This LEASE AGREEMENT (this “**Lease**”), dated for convenience as of April 1, 2022, is between 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 lessor (the “**Authority**”), and 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 lessee (the “**City**”).

## 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 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 a Site Lease, dated as of the date hereof, by and between the City and the Authority (the “**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. The Site Lease is being recorded concurrently with a memorandum of this Lease.

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 the 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 this Lease under which the City agrees to pay semiannual Lease Payments as the rental for the Leased Property.

17. The Lease Payments made by the City under this 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 this 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 this Lease.

21. The City and the Authority have found and determined that all acts and proceedings required by law necessary to make this Lease, when executed by the City and the Authority, the valid, binding and legal obligations of the City and the Authority, and to constitute this Lease a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Lease have been in all respects duly authorized.

#### A G R E E M E N T :

In consideration of the material covenants contained in this Lease, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease have the respective meanings given them in the Indenture.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular includes the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the City.* The City makes the following covenants, representations and warranties to the Authority, the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The City is a charter city and municipal corporation duly organized and validly existing under the Constitution and laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into the Site Lease and this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of the Site Lease and this Lease.
- (b) Due Execution. The representatives of the City executing the Site Lease and this Lease have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) Valid, Binding and Enforceable Obligations. The Site Lease and this Lease have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.

- (d) No Violations. Neither the execution and delivery of the Site Lease and this Lease, nor the fulfillment of or compliance with the terms and conditions thereof and hereof, nor the consummation of the transactions contemplated thereby and hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, or upon the Leased Property, except Permitted Encumbrances.
- (e) Title to Leased Property. The City has insurable fee simple title to the Leased Property, subject only to Permitted Encumbrances.

SECTION 2.2. *Covenants, Representations and Warranties of the Authority*. The Authority makes the following covenants, representations and warranties to the City, the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority duly organized and existing under a joint powers agreement and the laws of the State of California; has power to enter into this Lease, the Site Lease, the Assignment Agreement and the Indenture; is possessed of full power to own and hold, improve and equip real and personal property, and to lease the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.
- (b) Due Execution. The representatives of the Authority executing this Lease, the Site Lease, the Assignment Agreement and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.
- (c) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease, the Assignment Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.
- (d) No Violations. Neither the execution and delivery of this Lease the Site Lease, the Assignment Agreement or the Indenture, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or



encumbrance whatsoever upon any of the property or assets of the Authority, or upon the Leased Property, except Permitted Encumbrances.

- (e) Title to Leased Property. The Authority warrants that it has acquired a leasehold interest in the Leased Property, subject only to Permitted Encumbrances.

### ARTICLE III

#### DEPOSIT AND APPLICATION OF FUNDS; SUBSTITUTION, RELEASE AND ADDITION OF PROPERTY

SECTION 3.1. *Deposit of Moneys*. On the Closing Date, the Authority will cause the proceeds of sale of the 2022A Bonds to be deposited with the Trustee. The Trustee shall deposit such proceeds in accordance with Section 3.02 of the Indenture.

SECTION 3.2. *Substitution of Property*. The City has the option at any time and from time to time, to substitute other real property (the “**Substitute Property**”) for the Leased Property or any portion thereof (the “**Former Property**”), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

- (a) No Event of Default has occurred and is continuing, as certified in writing by the City.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Santa Clara County Recorder sufficient memorialization of an amendment hereof, the Site Lease and the Assignment Agreement that adds the legal description of the Substitute Property to Appendix A and deletes therefrom the legal description of the Former Property.
- (c) The City has obtained a CLTA policy of title insurance insuring the City’s leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein, as certified in writing by the City.
- (g) The City has filed with the Authority and the Trustee a written certificate of the City or other written evidence stating that the useful life of the Substitute Property at least extends to May 1, 20\_\_, that

the estimated value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the Lease Payments thereafter coming due and payable hereunder.

- (h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

SECTION 3.3. *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease (the “**Released Property**”) provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing, as certified in writing by the City.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Santa Clara County Recorder sufficient memorialization of an amendment hereof, the Site Lease and the Assignment Agreement which removes the Released Property from the Site Lease, the Assignment Agreement and this Lease.
- (c) The City has certified in writing to the Authority and the Trustee that the value of the property which remains subject to this Lease following such release is at least equal to the fair rental value of the property which remains subject to this Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The City has mailed written notice of such release to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be

recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Released Property.

SECTION 3.4. *Addition of Property.* The City may, at any time it deems it necessary or advisable, amend this Lease, and enter into any necessary or advisable site or ground lease, to add additional property to the property leased hereunder.

If the addition to the Leased Property (the "Additional Property") is being done in connection with the issuance of Additional Bonds, the following requirements shall apply:

- (a) No Event of Default has occurred and is continuing, as certified in writing by the City.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Santa Clara County Recorder sufficient memorialization of an amendment hereof, the Site Lease and the Assignment Agreement that adds the legal description of the Additional Property to Appendix A.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Additional Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Additional Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California.
- (e) The Additional Property does not cause the City to violate any of its covenants, representations and warranties made herein, as certified in writing by the City.
- (g) The City has filed with the Authority and the Trustee a written certificate of the City or other written evidence stating that the useful life of the Additional Property is at least equal to the remaining term hereof, that the estimated value of the Leased Property, after the addition of the Additional Property, is at least equal to the aggregate Outstanding principal amount of the Bonds (after giving effect to the Additional Bonds proposed to be issued), and the fair rental value of the Leased Property, after the addition of the Additional Property, is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (h) The City has mailed written notice of such addition to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon commence as to the Additional Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any addition of property under this Section. The Authority and the City will

execute, deliver and cause to be recorded all documents required to cause the Additional Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

## ARTICLE IV

### LEASE OF LEASED PROPERTY; TERM OF THIS LEASE; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property.* The Authority hereby leases the Leased Property to the City and the City hereby leases the Leased Property from the Authority, upon the terms and conditions set forth in this Lease.

SECTION 4.2. *Term.* The Term of this 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 Lease shall be extended until 10 days after the Indenture shall be discharged by its terms, except that the Term of this 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 Lease shall terminate 10 days after such discharge or upon written notice by the City to the Authority, whichever is earlier. The provisions of this Section are subject to the provisions of Sections 6.2 and 6.3 relating to the taking in eminent domain, damage and destruction of the Leased Property in whole or in part.

#### SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in Appendix B attached to this Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under Article IX, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder. The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee. The Lease Payments payable in any Rental Period are for the use of the Leased Property during that Rental Period.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Sections 9.2 or 9.3, the principal components of the remaining Lease Payments will be reduced in

integral multiples of \$5,000 among Lease Payment Dates on a basis which corresponds to the principal maturities of the Bonds which are redeemed thereby; and the interest component of each remaining Lease Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the 2022A Bonds thereby redeemed under Section 4.01 of the Indenture and with respect to any Additional Bonds thereby redeemed under the provisions of the Supplemental Indenture relating to such Additional Bonds.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

(d) Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, under the Assignment Agreement, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees to pay to the Trustee at its Office, all payments payable by the City under this Section and all amounts payable by the City under Article IX.

(f) Special Tax Revenues; Effect on Obligation to make Lease Payments. Under the Indenture, Revenues include Special Tax Revenues. Pursuant to Section 5.01(c) of the Indenture, Special Tax Revenues, if any, will be deposited into the Bond Fund. Without in any way limiting Section 4.3(a), on any Lease Payment Date, the City's obligation to pay make the Lease Payments on such Lease Payment Date shall be deemed satisfied to the extent that Special Tax Revenues are held in the Bond Fund, the Interest Account or the Principal Account as of such date.

**SECTION 4.4. *Source of Payments; Covenant to Budget and Appropriate.*** The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.2 and 6.3. Subject to the provisions of Sections 6.2 and 6.3, the City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of this Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. The foregoing covenant of the City contained constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City. Notwithstanding any other

provision of this Lease, the City shall in no event be obligated to pay any Lease Payments or Additional Rental Payments due hereunder in any Rental Period for any succeeding Rental Period.

SECTION 4.5. *Additional Rental Payments.* In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority hereunder:

- (a) all fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due, including, but not limited to, the reasonable out-of-pocket expenses of the Authority in connection with the execution and delivery of this Lease or the Indenture, or in connection with the issuance of the Bonds (including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease, the Bonds, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of this Lease),
- (b) all reasonable compensation to the Trustee for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture, including, but not limited to, the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease or the Indenture; and
- (c) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease or the Indenture.

SECTION 4.6. *Quiet Enjoyment.* Throughout the Term of this Lease, the Authority shall provide the City with quiet use and enjoyment of the Leased Property and the City will peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.7. *Title.* Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Leased Property transfers to and vests in the City. The Authority shall take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property are the responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and will pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

The City may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 5.2. *Modification of Leased Property.* The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section; except that if any such lien is established and the City first notifies or causes to be notified the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property,

and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

SECTION 5.3. *Liability and Property Damage Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease, but only if and to the extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.7 and 5.8, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

SECTION 5.4. *Casualty Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds. Such insurance (i) must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and (ii) must include flood and earthquake insurance but only if available at reasonable cost from reputable insurers in the judgment of the City. Any such flood or earthquake insurance procured by the City may be in any amounts and is not subject to the minimum amount described in the first sentence of this Section 5.4. Such insurance may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance subject to the provisions of Sections 5.7 and 5.8, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The Net Proceeds of such insurance must be applied as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years; provided, however, that such insurance shall be required to be procured and maintained by the City only if available at reasonable cost from reputable insurers in the judgment of the City. Such insurance may be maintained as part of or in



conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Recordation Hereof; Title Insurance.* On or before the Closing Date the City shall, at its expense, (a) cause the Site Lease, the Assignment Agreement and this Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Santa Clara County Recorder, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds. All Net Proceeds received under any such title insurance policy must be deposited with the Trustee in the Bond Fund to be credited towards the prepayment of the remaining Lease Payments under Section 9.3.

SECTION 5.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease. All such policies shall provide that the Trustee is given 10 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a certificate of the City stating that all policies of insurance required hereunder are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any insurance maintained under Section 5.3 is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

SECTION 5.8. *Alternative Risk Management Programs; Additional Insurance.* The City has adopted alternative risk management programs to insure against certain of the risks required to be insured against under the terms of this Article V (except self-insurance against loss of rental income as required by Section 5.5 hereof or self-insurance for title insurance as required by Section 5.6 hereof), which have been approved as reasonable and appropriate by a Risk Management Consultant. Notwithstanding anything in this Lease Agreement to the contrary, the City shall have the right to modify such programs or adopt additional alternative risk management programs to insure against any of the risks required to be insured against under the terms of this Article V, including a program of self-insurance (except self-insurance against loss of rental income as required by Section 5.5 hereof or self-insurance for title insurance as required by Section 5.6 hereof), in whole

or in part. Any such alternative risk management program must be approved as reasonable and appropriate by a Risk Management Consultant. The approval of the Risk Management Consultant shall be in the form of a report on the nature of the program and the adequacy of its funding which shall be prepared and filed with the Trustee on the 90th day prior to the date such program is proposed to take effect with respect to the Leased Property and the Bonds, and annually on each anniversary of such effective date, during any period when such program is in effect, commencing on or prior to the date such program is implemented. If such annual approving report is not timely filed with the Trustee, the Trustee shall promptly notify the City in writing and the City shall immediately obtain insurance as required by this Lease Agreement or promptly file the annual approving report. In addition, the City Manager of the City may, if it is in the best interests of the City, approve such other types of insurance, including any increases in the insurance coverage required by this Article, upon the recommendation of a Risk Management Consultant, or in connection with obtaining or maintaining any rating on the Bonds.

SECTION 5.9. *Installation of City's Personal Property.* The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property by the City or the City's sublessee. All such items shall remain the sole property of the City or the City's sublessee, as applicable, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City or the City's sublessee, as applicable, at any time, provided that the City must repair all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City or the City's sublessee from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, so long as no such lien or security interest attaches to any part of the Leased Property.

SECTION 5.10. *Liens.* The City may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Trustee do not materially and adversely affect the leasehold estate of the City in the Leased Property hereunder. If any such mortgage, pledge, lien, charge, encumbrance or claim does materially and adversely affect the leasehold estate of the City in the Leased Property hereunder, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible; provided that the City is not required to do so prior to the time when such mortgage, pledge, lien, charge, encumbrance or claim actually causes such material adverse effect. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.11. *Advances.* If the City fails to perform any of its obligations under this Article V, the Authority may (but is not required to) take such action as it deems necessary to cure such failure, including the advancement of money, and the City shall repay all such advances as Additional Rental Payments hereunder, with interest at the rate set forth in Section 4.3(c).

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Trustee, as assignee of the Authority under the Assignment Agreement, has the right to receive all Net Proceeds. As provided in the Indenture, the Trustee will deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied as set forth in Section 5.06 of the Indenture.

SECTION 6.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

- (a) this Lease shall continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and
- (b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

SECTION 6.3. *Abatement Due to Damage or Destruction.* The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

## ARTICLE VII

### OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY AND THE TRUSTEE MAKE NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY

ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. The Authority has no liability for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or use of the Leased Property by the City.

SECTION 7.2. *Access to the Leased Property.* The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, have the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Authority, any Authority Representative and the Authority's successors or assigns may have such rights of access to the Leased Property or any component thereof as reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder; *provided, however*, that neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease,
- (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property,
- (e) the acquisition, construction, improvement and equipping of the Leased Property, or the authorization of payment of the costs thereof, or
- (f) the acceptance and performance of the duties of the Trustee under the Indenture, the Assignment Agreement and under this Lease.

No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Authority, the Trustee or their respective officers, agents, employees, successors or assigns.

SECTION 7.4. *Assignment and Subleasing by the City.* The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- (a) this Lease and the obligation of the City to make Lease Payments hereunder must remain obligations of the City, as certified in writing by the City;
- (b) the City must, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease; and
- (c) no such sublease by the City may cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California, as certified in writing by the City.

SECTION 7.5. *Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Lease in such manner as to assure that the interest on Bonds the interest of which is intended to be exempt from federal income taxation remains excluded from gross income under the Code;
- (iv) to amend the description of the Leased Property to reflect accurately the property originally intended to be included therein, or in connection with any substitution, release or addition of property under Sections 3.2, 3.3 and 3.4;
- (v) to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property in the event of the issuance of Additional Bonds, but only to obligate the City to pay additional amounts of Lease Payments such that the scheduled amount of Lease Payments payable after such amendment shall be sufficient to pay the principal of and interest on the Bonds and such Additional Bonds; or
- (vi) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Lease Payment Date or reducing any Lease Payment or any premium payable upon the prepayment thereof, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto. If the Trustee's consent to such modification or amendment is required, the Trustee shall be entitled to the same documents as it would be entitled to under Article IX of the Indenture for such type of modification or amendment.

SECTION 7.6. *Reserved.*

SECTION 7.7. *Continuing Disclosure.* The City shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Lease, failure of the City to comply with such Continuing Disclosure Certificate will not constitute an Event of Default, although any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Any one or more of the following events constitute an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee. If in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time, such period of time not to be longer than 180 days after the delivery of such default notice.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings

instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease. Notwithstanding anything herein or in the Indenture to the contrary, neither the Authority nor the Trustee may accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; except that no termination of this Lease may be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 8.3.

(a) Enforcement of Payments Without Termination.

(i) If the Authority does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the releasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority.

(ii) The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof.

(b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any

re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Rental Payments. Any surplus received by the Authority from such re-leasing shall be deposited in the Bond Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

- (c) Appointment of Authority as Agent and Attorney-in-Fact; Surrender of Leased Property. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property whether owned by the City or a sublessee of the City, to place such personal property in storage or other suitable place in the County of Santa Clara for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such personal property by the Authority or its duly authorized agents in accordance with the provisions of this Section 8.2. The City agrees to surrender and quit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this Section 8.2, and the City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Leased Property. Any surplus received by the Authority from such re-leasing shall be deposited in the Bond Fund.
- (d) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy is cumulative and in addition to every other remedy given under this Lease or now or hereafter existing



at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it is not necessary to give any notice, other than as expressly required in this Article VIII or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If the Authority or the City defaults under any of the provisions of this Lease and the nondefaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party; *provided, however*, that the Trustee shall not be required to expend its own funds for any payment described in this Section.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If the Authority or the City breaches any agreement in this Lease and thereafter the other party waives the breach, such waiver is limited to the particular breach so waived and does not operate to waive any other breach hereunder.

SECTION 8.6. *Application of Proceeds.* All net proceeds received from the re-lease of the Leased Property under this Article VIII, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, must be paid to and applied by the Trustee in accordance with Section 7.03 of the Indenture.

SECTION 8.7. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Bond Owners, to which assignment the City hereby consents. The Trustee and the Bond Owners shall exercise such rights and remedies in accordance with the Indenture.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.* Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments allocable to the Leased Property in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Indenture, is either:

- (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, (which opinion must be addressed and delivered to the Trustee), together with interest to accrue thereon and together with

any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.3(a), as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section with respect to all unpaid Lease Payments, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease will continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said Lease Payments, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of said Lease Payments from such security deposit, and (c) under Section 4.7, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said security deposit constitutes a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2. *Optional Prepayment.* The City has the option to prepay the principal components of the Lease Payments in whole, or in part in any integral multiple of \$5,000, from any source of legally available funds, on any date on or after May 1, 2031, at a prepayment price equal to the aggregate principal components of the Lease Payments to be prepaid, together with the interest component of the Lease Payment required to be paid on such date, and together with a prepayment premium equal to the premium (if any) required to be paid on the resulting redemption of Bonds under Section 4.01(a) of the Indenture.

Such prepayment prices shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds under Section 4.01(a) of the Indenture. The City shall give 10 days' written notice to the Trustee of its intention to prepay the Lease Payments under this Section.

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall prepay the principal components of the Lease Payments allocable to the Leased Property in whole or in part on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased Property theretofore deposited in the Redemption Fund for that purpose under Article VI hereof and Section 5.06 of the Indenture. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, will be credited towards the City's obligations under this Section and applied to the corresponding redemption of Bonds under Section 4.01(c) of the Indenture.

SECTION 9.4. *Credit for Amounts on Deposit.* If the principal components of the Lease Payments are prepaid in full under this Article IX, such that the Indenture is discharged by its terms as a result of such prepayment, at the written election of the City filed with the Trustee any or all amounts then on deposit in the Bond Fund (and the accounts therein) will be credited towards the amounts then required to be so prepaid.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this 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, or other form of telecommunication, as set forth below. Notice shall be effective either (a) upon transmission by email, or other form of telecommunication, confirmed by telephone, (b) 2 Business Days after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or 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](mailto: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 10.2. *Binding Effect.* This Lease inures to the benefit of and binds the Authority, the City and their respective successors and assigns.

SECTION 10.3. *Severability.* If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease.* This Lease is deemed and construed to be a “net-net-net lease” and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.6. *Further Assurances and Corrective Instruments.* The Authority and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 10.7. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

SECTION 10.8. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.9. *Authority and City Representatives.* Whenever under the provisions of this Lease the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority and for the City by an Authorized Representative thereof, and any party hereto may conclusively rely upon any such approval or request.

SECTION 10.10. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

SECTION 10.11. *Waiver of Personal Liability.* All liabilities under this 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 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 Lease for anything done or omitted to be done by the Authority or the City hereunder.

[Signature Page Follows on Next Page]

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

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

By \_\_\_\_\_  
Julia H. Cooper  
Treasurer

Attest:

\_\_\_\_\_  
Secretary

**CITY OF SAN JOSE, as lessee**

By \_\_\_\_\_  
Julia H. Cooper  
Director of Finance

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:  
Nora Frimann, City Attorney

By: \_\_\_\_\_  
Rosa Tsongtaarii  
Senior Deputy City Attorney

[Signature Page to Lease Agreement]

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**APPENDIX A**  
**DESCRIPTION OF THE LEASED PROPERTY**

**APPENDIX B  
SCHEDULE OF LEASE PAYMENTS**

Lease Payment Date*	Principal Component	Interest Component	Aggregate Lease Payment
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Total

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\* Lease Payment Dates are the Business Day immediately preceding each date listed in the schedule