

RECORDING REQUESTED BY:
Stewart Title Guaranty Company
Commercial Services San Francisco

TO BE RECORDED MAIL TO:
Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Scott R. Ferguson, Esq.

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

SITE LEASE

This SITE LEASE (this "Site Lease"), dated for convenience as of October 1, 2020, is between the CITY OF SUNNYVALE, a municipal corporation and charter city duly organized and existing under the laws of the State of California, as lessor (the "City"), and the SUNNYVALE FINANCING AUTHORITY, a joint 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 powers authority duly organized and existing under a Joint Exercise of Powers Agreement dated September 29, 1992, by and between the City and the Redevelopment Agency of the City of Sunnyvale, under Articles 1 through 4 (commencing with section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act") and is authorized pursuant to Article 4 (commencing with section 6584) of the Act (the "Bond Law") to borrow money to provide financing or refinancing for public capital improvements of public entities such as the City.

2. The City desires to finance public capital improvements for the City consisting generally of Phase 1 of the City's Civic Center Modernization Project, and any other public improvements selected by the City (collectively, the "2020 Project").

3. To that end, under this Site Lease, the City has proposed to lease to the Authority the following real property and improvements located and to be located thereon, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property"), in consideration of the payment by the Authority of an upfront rental payment (as described in Section 3 hereof, the "Site Lease Payment") that is sufficient to provide funds to finance the 2020 Project:

(i) the City Hall located within the City's Civic Center complex at 456 West Olive Avenue, Sunnyvale, California, Assessor's Parcel Number 165-03-007, as currently exists and as the City Hall will be reconstructed as part of the 2020 Project,

(ii) the City's Public Safety Building located within the City's Civic Center complex at 456 West Olive Avenue, Sunnyvale, California, Assessor's Parcel Number 165-02-003 (the "Public Safety Building"), and

(iii) the City's Corporation Yard located at 221 Commercial Street, Sunnyvale, California (the "Corporation Yard").

4. The Authority has authorized the issuance of its bonds captioned "Sunnyvale Financing Authority 2020 Lease Revenue Bonds (Civic Center Project)" in the aggregate original principal amount of \$_____ (the "Bonds") under an Indenture of Trust dated as of October 1, 2020 (the "Indenture"), between the Authority and U.S. Bank 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.

5. In order to provide revenues that are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of October 1, 2020 (the "Lease Agreement"), which has been recorded concurrently herewith, under which the City has agreed to pay semiannual Lease Payments (as defined in the Lease Agreement) as the rental for the Leased Property thereunder.

6. The Lease Payments made by the City under the Lease Agreement have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of October 1, 2020, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

7. The City and the Authority have found and determined that all acts and proceedings required by law necessary to make this Site 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 Site 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 Site Lease have been in all respects duly authorized.

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

SECTION 2. *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 3. *Term; Possession.* The term of this Site Lease shall commence on the Closing Date, and the Authority shall be entitled to possession of the Leased Property hereunder on said date. The term of this Site Lease shall terminate, and the right of the Authority hereunder to possession of the Leased Property shall thereupon cease, on April 1, 20__, or such earlier or later date on which the Lease Payments are paid in full or provisions made for such payment, but in no event later than April 1, 20__, being ten years after the stated maturity date of the Bonds. 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 4. *Rental.* The Authority shall pay to the City, as and for rental of the Leased Property hereunder, the sum of \$_____ (the "Site Lease Payment"). The Site Lease Payment is due and payable upon the issuance of the Bonds and the execution and delivery hereof, and will be paid from the proceeds of the 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 that 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.

The Site Lease Payment shall be applied to make the deposits set forth in the Indenture.

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

SECTION 5. *Assignments and Subleases.* Unless the City is in default under the Lease Agreement, 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 Lease Agreement, without the prior written consent of the City.

SECTION 6. *Substitution or Release of Property.* If the City exercises its option under Section 3.3 of the Lease Agreement 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 3.4 of the Lease Agreement to release a portion of the Leased Property from the Lease Agreement, such substitution shall also operate to release such portion of the Leased Property hereunder. The description of the Leased Property which is leased hereunder shall conform at all times to the description of the Leased Property which is leased under the Lease Agreement.

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 all right, title and interest of the Authority 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 the Lease Agreement 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 Agreement remains in effect, the Lease Payments payable by the City under the Lease Agreement 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 Agreement and subject only to Permitted Encumbrances.

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Authority are solely liabilities of the Authority, and the City hereby releases each and every member and officer of the Authority of and from any personal or individual liability under this Site Lease. No member or officer of the Authority or its governing board 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 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 principal components of the Lease Payments payable under the Lease Agreement 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.* All notices or communications to be given under this Site Lease shall be given by first class mail or personal delivery to the party entitled thereto at or by email transmission or other form of electronic communication, at its address set forth below. Notice shall be effective either (a) upon transmission by email transmission or

other form of electronic communication, (b) 48 hours 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 City: City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086
Attention: City Manager
Email: finance@sunnyvale.ca.gov

If to the Authority: Sunnyvale Financing Authority
456 W. Olive Avenue
Sunnyvale, CA 94086
Attention: Executive Director
Email: finance@sunnyvale.ca.gov

If to the Trustee: U.S. Bank National Association
One California Street, Suite 1000
San Francisco, CA 94111
Attn: Global 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 Tax 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 on the Bonds under the Tax Code, in the opinion of Bond Counsel;
- (iii) to conform to any amendment of the Indenture which is made thereto in accordance with applicable provisions of the Indenture; or
- (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 or release 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.

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 SUNNYVALE, as lessor

By _____
City Manager

Attest:

City Clerk

**SUNNYVALE FINANCING AUTHORITY,
as lessee**

By _____
Executive Director

Attest:

Secretary

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property which is situated in the County of Santa Clara, State of California, and is more particularly described as follows:

CITY HALL

PUBLIC SAFETY BUILDING

CORPORATION YARD