

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.

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated for convenience as of October 1, 2020, is between the SUNNYVALE FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF SUNNYVALE, a municipal corporation and charter city duly organized and existing under the laws of the State of California, as lessee (the "City").

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 a Site Lease dated as of October 1, 2020 (the "Site Lease"), and recorded concurrently herewith, 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 the Site Lease, 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 the 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 this Lease Agreement, under which the City has agreed to pay semiannual Lease Payments (as defined herein) as the rental for the Leased Property hereunder.

6. The lease payments made by the City under this 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 Lease Agreement, 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 Agreement 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 Agreement 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:

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 Agreement 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 Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

(d) Whenever the term "may" is used herein with respect to an action by one of the parties hereto, such action shall be discretionary and the party who "may" take such action shall be under no obligation to do so.

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 and the Trustee as of the date of the execution and delivery of this Lease Agreement:

- (a) Due Organization and Existence. The City is a municipal corporation and charter city duly organized and validly existing under the 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 Agreement 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 Agreement.
- (b) Due Execution. The representatives of the City executing the Site Lease and this Lease Agreement 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 Agreement 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 Conflicts. The execution and delivery of the Site Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease Agreement or the financial condition, assets, properties or operations of the City.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease and this Lease Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease Agreement or the financial conditions, assets, properties or operations of the City.

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

- (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 Agreement, 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 Agreement, 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 Agreement, 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 Conflicts. The execution and delivery of this Lease Agreement, the Site Lease, the Assignment Agreement and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site Lease, the Assignment Agreement and the Indenture or the financial condition, assets, properties or operations of the Authority.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease Agreement, the Site Lease, the

Assignment Agreement or the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease Agreement, the Site Lease, the Assignment Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site Lease, the Assignment Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

LEASE TO THE CITY; ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS; SUBSTITUTION AND RELEASE OF LEASED PROPERTY

SECTION 3.1. *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 Agreement.

SECTION 3.2. *Issuance of Bonds; Application of Proceeds*. In consideration for the agreement by the City to lease the Leased Property under this Lease Agreement as provided herein, the Authority hereby agrees to issue the Bonds under the Bond Law for the purpose of providing funds to finance the 2020 Project. The proceeds received by the Authority from the sale of the Bonds to the Original Purchaser shall be applied on the Closing Date in the amounts and for the purposes set forth in Section 3.02 of the Indenture.

SECTION 3.3. *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.
- (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 and an amendment of the Site Lease and the Assignment Agreement which removes the Former Property from this Lease Agreement and the Site Lease and which adds the Substitute Property to this Lease and the Site Lease.

- (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, and has been determined to serve a governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- (f) The City and the Authority have filed with the Trustee a written certificate stating that (a) based on the estimated value of the Substitute Property, the remaining Lease Payments constitute fair rental value for the use and occupancy of the Substitute Property, taking into consideration the factors set forth in Section 4.2(d), and (b) the useful life of the Substitute Property at least extends to April 1, 20__.
- (g) 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 Agreement and the term of the Site Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property herein and therein will apply with full force and effect to the Substitute Property. The City shall not be 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 shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease Agreement 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 Agreement and the Assignment Agreement.

SECTION 3.4. *Release of Property.*

(a) *General.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease Agreement and the Site Lease (the "Released Property"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such release:

- (i) No Event of Default has occurred and is continuing.

- (ii) 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 and an amendment of the Site Lease which removes the Released Property from this Lease Agreement and the Site Lease.
- (iii) The City and the Authority have filed with the Trustee a written certificate stating that based on the estimated value of the property which remains subject to this Lease Agreement following such release, the remaining Lease Payments constitute fair rental value for the use and occupancy of such property, taking into consideration the factors set forth in Section 4.2(d).
- (iv) 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 Agreement and the term of the Site Lease will thereupon end as to the Released Property. The City shall not be 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 Agreement and the Assignment Agreement of record against the Released Property.

(b) *Release of Public Safety Building and Corporation Yard.* Notwithstanding the foregoing, upon the completion of the 2020 Project, the City shall have the absolute right to release from this Lease Agreement, the Site Lease and the Assignment Agreement the portion of the Leased Property consisting of the Public Safety Building and Corporation Yard without meeting the conditions set forth in subsection (a) above, and upon satisfaction of the following conditions:

- (i) The City shall deliver a certificate to the Trustee certifying that the 2020 Project has been completed and that the City has full use and occupancy of the 2020 Project.
- (ii) The City and the Authority shall execute a Notice of Release substantially in the form attached hereto as Appendix C, and the City shall record the Notice of Release in the real property records of Santa Clara County.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Public Safety Building and Corporation Yard. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release.

SECTION 3.5. *No Merger.* It is the express intention of the Authority and the City that this Lease Agreement and the obligations of the parties hereunder shall be and remain separate and distinct from the Site Lease and the obligations of the parties thereunder, and that during the term of the Site Lease and this Lease Agreement no

merger of title or interest shall occur or be deemed to occur as a result of the respective positions of the Authority and the City thereunder and hereunder.

ARTICLE IV

TERM OF THIS LEASE AGREEMENT; LEASE PAYMENTS

SECTION 4.1. *Term.* The Term of this Lease Agreement shall commence on the Closing Date and end on the date on which the Indenture is discharged in accordance with Section 10.01, unless such term is extended as hereinafter provided. If on April 1, 20__, the Indenture has not been discharged by its terms, or if the Lease Payments payable hereunder have been abated at any time and for any reason, then the Term of this Lease Agreement shall be extended until the Indenture has been discharged by its terms, but not to exceed April 1, 20__, being 10 years after the final scheduled Lease Payment hereunder.

SECTION 4.2. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3, 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 Agreement, 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 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 shall not be 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 Bond Year are for the use of the Leased Property during that Bond Year.

(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 and interest components of the remaining Lease Payments will be reduced to correspond to the payments of principal of and interest on the Bonds coming due and payable following the resulting redemption of the Bonds under the Indenture.

(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 shall constitute the total rental for the Leased Property for such Rental Period, and shall be 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 such 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 Agreement, 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 all amounts due under this Section to the Trustee at its Office.

SECTION 4.3. *Source of Payments; Covenant to Budget and Appropriate*. The Lease Payments shall be payable from any source of available funds of the City, 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 Agreement 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 Agreement agreed to be carried out and performed by the City.

SECTION 4.4. *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;
- (b) compensation to the Trustee for its services rendered under the Indenture and for all expenses, charges, costs, liabilities, legal fees and other disbursements incurred by the Trustee in and about the performance of its powers and duties under the Indenture;
- (c) all fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease Agreement or the Indenture;
- (d) all amounts coming due and payable as Excess Investment Earnings in accordance with Section 7.6(e); and

- (e) all out-of-pocket expenses of the Authority in connection with the execution and delivery of this Lease Agreement 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 Agreement, 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 Agreement.

SECTION 4.5. *Quiet Enjoyment.* Throughout the Term of this Lease Agreement, 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 Agreement. 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 4.6. *Title.* Upon the termination of this Lease Agreement (other than as a result of the occurrence of an Event of Default under Article VIII), all right, title and interest of the Authority in and to the Leased Property shall transfer to and vest 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 Agreement, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property shall be the responsibility of the City, and the City shall 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 Agreement.

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 Agreement 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 Agreement. 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, shall 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 stop notice, 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 Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement, but only if and to the extent available from reputable insurers at reasonable cost in the 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, 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 shall be applied toward extinguishment or satisfaction of the liability with respect to which it has been 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 Agreement, 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 shall, 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; provided that earthquake insurance shall not be required under any circumstances. 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 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 shall 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 Agreement, 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. 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 proceeds of such insurance, if any, shall 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 Agreement, 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 shall be deposited with the Trustee and applied in accordance with the provisions of the Indenture.

SECTION 5.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 shall 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 Agreement. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The City shall file with the Trustee, upon the written request of the Trustee, 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 shall 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. *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. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City at any time, provided that the City shall repair all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City 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 5.9. *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 5.10. *Advances.* If the City fails to perform any of its obligations under this Article, the Authority may 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 4.2(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, shall have the right to receive all Net Proceeds. As provided in the Indenture, the Trustee shall deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied as set forth in Section 5.05 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 Agreement 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 Agreement 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. Notwithstanding the foregoing provisions of this Section, the Lease Payments may be paid with proceeds of rental interruption insurance during any period in which the Lease Payments would otherwise be subject to abatement, it being hereby declared that such proceeds constitute a special fund for the payment of the Lease Payments. In the event of any such damage or destruction, this Lease Agreement continues in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY MAKES 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 Agreement 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 Agreement,
- (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 and under this Lease Agreement.

No indemnification is made under this Section or elsewhere in this Lease Agreement for willful misconduct or negligence under this Lease Agreement 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 Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;
- (b) the City shall, 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;
- (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; and
- (d) the City shall furnish to the Authority and the Trustee a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become included in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.5. *Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Lease Agreement, 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 Agreement, 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 Agreement in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax 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 or release of property under Sections 3.3 or 3.4;

- (v) to obligate the City to pay Supplemental Lease Payments that constitute additional amounts of rental for the use and occupancy of the Leased Property, but only if (A) such Supplemental Lease Payments are pledged or assigned for the payment of any bonds, notes or other obligations, including without limitation an issue of Additional Bonds under the Indenture, the proceeds of which are applied to finance or refinance the acquisition or construction of any real or personal property for which the City is authorized to expend funds subject to its control, (B) the City has filed with the Trustee a Written Certificate of the City stating that, based on the estimated value of the Leased Property at the time of such amendment or following the completion of the acquisition and construction of any improvements to be financed from the proceeds of such bonds, notes or other obligations, the Lease Payments and the Supplemental Lease Payments together constitute fair rental value for the use and occupancy of such property, taking into consideration the factors set forth in Section 4.2(d), (C) the City has filed with the Trustee written evidence that the amendments made under this clause (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the 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 shall (a) extend or have the effect of extending any Lease Payment Date or reducing any Lease Payment, 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.

SECTION 7.6. *Tax Covenants*

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, and shall constitute Additional Rental Payments hereunder.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements under this subsection (e).

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 Agreement, 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.

- (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 Agreement. 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 Agreement 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. If the Authority does not elect to terminate this Lease Agreement 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 re-leasing 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 Agreement, 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. 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, to place the Leased 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 the Leased Property by the Authority or its duly authorized agents in

accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement 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 Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement 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 Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. 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 paragraph, 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.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease Agreement and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease Agreement 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 Agreement, and no termination of this Lease Agreement 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 Agreement. 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 Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.
- (c) 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 Agreement 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 it is not necessary to give any notice, other than as expressly required in this Article 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 Agreement and the non-defaulting 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 non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If the Authority or the City breaches any agreement in this Lease Agreement 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, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, shall 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 have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Bond Owners. 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 Agreement, 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 or an escrow agent 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 4.2(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 Agreement will continue, (b) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement 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 4.6, 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 Agreement.

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 April 1, 20__, 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 Interest Payment 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 of the Indenture. Such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds under Section 4.01 of the Indenture. The City shall give written notice to the Trustee of its intention to prepay the Lease Payments under this Section at least 45 days prior to the date fixed for such prepayment.

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall prepay the principal components of the Lease Payments 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 which is required to be used for that purpose under Article VI hereof and Section 5.05 of the Indenture. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be deposited by the Trustee in the Redemption Fund to be applied to the corresponding redemption of Bonds under Section 4.03 of the Indenture.

SECTION 9.4. *Credit for Amounts on Deposit.* If the principal components of the Lease Payments are prepaid in full under Sections 9.2 or 9.3, 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) and in the Insurance and Condemnation Fund, will be credited towards the amounts then required to be so prepaid.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Notices.* All notices or communications to be given under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto, 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 10.2. *Binding Effect.* This Lease Agreement 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 Agreement 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 Agreement shall be 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 Agreement.

SECTION 10.7. *Execution in Counterparts.* This Lease Agreement 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 Agreement shall be 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 Agreement 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 Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

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

**SUNNYVALE PUBLIC FINANCING
AUTHORITY, as lessor**

By _____
Executive Director

Attest:

Secretary

CITY OF SUNNYVALE, as lessee

By _____
City Manager

Attest:

City Clerk

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

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
April 1, 2021			
October 1, 2021			
April 1, 2022			
October 1, 2022			
April 1, 2023			
October 1, 2023			
April 1, 2024			
October 1, 2024			
April 1, 2025			
October 1, 2025			
April 1, 2026			
October 1, 2026			
April , 2027			
October 1, 2027			
April 1, 2028			
October 1, 2028			
April 1, 2029			
October 1, 2029			
April 1, 2030			
October 1, 2030			
April 1, 2031			
October 1, 2031			
April 1, 2032			
October 1, 2032			
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April 1, 2034			
October 1, 2034			
April 1, 2035			
October 1, 2035			
April 1, 20__			
October 1, 20__			
April 1, 20__			
October 1, 20__			

* Lease Payment Dates are the 5th Business Day immediately preceding each date listed in the schedule

APPENDIX C
NOTICE OF RELEASE