



DISCUSSION ITEM

Agenda Item # 7

AGENDA REPORT SUMMARY

Meeting Date: December 15, 2020

Subject: Community Center Project Financing

Prepared by: Sharif Etman, Administrative Services Director

Approved by: Jon Maginot, Acting City Manager

Attachments:

1. Sterling National Bank (SNB) Updated Term Sheet
2. Amortization Schedule
3. Resolution Approving Financing
4. Site Lease
5. Lease Agreement

Initiated by:

Staff

Previous Council Consideration:

None

Fiscal Impact:

Starting in FY 2020/21, the annual debt service will be \$622,090

- Loan Amount: \$10,000,000
- Interest Rate: 2.29%
- Payment dates June 30th every fiscal year (beginning on June 30, 2021)
 - Amount already included in approved budget: Y
 - Amount above budget requested: 0
- Final Payment June 30, 2040
- Loan Proceeds Breakdown
 - \$9,900,000 Project Funds
 - \$100,000 Financing Costs

Environmental Review:

Not applicable.

Policy Question(s) for Council Consideration:

Not applicable

Reviewed By:

City Manager

CJ

City Attorney

JH

Finance Director

SE



Subject: Community Center Project Financing

Summary:

- City staff have worked with bond counsel (Jones Hall) and municipal advisor (NHA Advisors, LLC) to finalize Los Altos Community Center project loan terms with Sterling National Bank.
- The Financial Commission and its subcommittee met on November 16th to review the revised term sheet and approve the draft debt management policy that is required as part of the loan financing. At the special meeting on November 16th, the Financial Commission made a motion to recommend approval of the debt management policy and also discussed the revised term sheet from Sterling National Bank for City Council's consideration.
- The loan will be structured as a lease/leaseback financing between the City and the Public Property Financing Corporation of California, a nonprofit corporation, which will assign its right to receive lease payments to Sterling National Bank.
- The loan is anticipated to fund on December 22nd with proceeds of \$9,905,000 to be deposited with the City for the Community Center project fund.
- The first debt service payment will be June 30, 2021 for \$622,090.

Staff Recommendation:

Adopt the attached Resolution authorizing the lease/leaseback financing in the maximum principal amount of \$10 million to finance a portion of the costs of the Community Center.



Subject: Community Center Project Financing

Purpose

Approve the lease/leaseback financing with the Public Property Financing Corporation of California to evident a loan from Sterling National Bank, and related documents and actions.

Background

The City of Los Altos is currently building a new Community Center. The overall approved budget for the project is \$38.3M. Included in the budget is the financing of \$10M for a portion of the project costs. The financed amount will be repaid over a 20-year period at a rate of 2.29%. Annual debt service payments are expected to be approximately \$622,090 with a first payment date on June 30, 2021 and each subsequent December 30th and June 30th through June 30, 2040. The City Council included in the first payment in its Budget approval for FY 2020/21. The financing is crucial to manage cash flow and complete the Community Center project in early 2021.

Discussion/Analysis

The City Council has approved a financing for \$10M as part of its funding for the Community Center project. The financing proposal from Sterling National Bank will allow the City to proceed with the completion of the project as planned. Terms of the financing include a fixed interest rate and the ability to prepay all or a portion of the outstanding principal on any scheduled payment date. Total annual debt payments of \$622,090 will begin in FY 2020/21. Currently the FY 2021 Approved Budget included \$700,000 for the proposed financing debt service. The term sheet from Sterling National Bank is attached to this report.

The financing will be structured as a lease/leaseback financing between the City and the Public Property Financing Corporation of California, a nonprofit corporation that regularly serves as counterparty to lease/leaseback financings by California municipalities. Under this structure, the City will lease certain property consisting of the City's Main Library to the Corporation under the Site Lease. Simultaneously, the Corporation will lease the Main Library back to the City under the Lease Agreement in return for semi-annual payments to be made by the City. The Corporation will assign its right to receive those lease payments to Sterling National Bank. The City will be required to maintain standard casualty insurance to protect against fire, lightning, and other casualties, as well as 24 months' rental interruption insurance.

The Main Library was chosen as the leased asset for the financing. Ownership of the library will remain with the City, the City will still have the ability to make renovations and modifications to the Library so long as those modification don't impair the value or municipal use of the Library. If, in the future, the City decides to rebuild or demolish the Main Library, the lease documents permit the substitution of an alternative asset. The Library is not collateral and would not be subject to foreclosure. Staff has notified the Library Joint Powers Authority that their existing lease of the Library will be subordinated to the lease/leaseback financing. It is important to note that Library operations will not be impacted in any way.



Subject: Community Center Project Financing

Options

- 1) Adopt the Resolution approving the \$10 million lease/leaseback financing and related documents and actions to provide financing for the Community Center.

Advantages: The City can move forward with adequate cash flow and funding for the Community Center project as planned.

Disadvantages: None

- 2) Do not adopt the Resolution approving the \$10 million lease/leaseback financing and related documents and actions to provide financing for the Community Center.

Advantages: None

Disadvantages: The City will not have adequate cash flow and funding to complete the Community Center project as planned.

Recommendation

Adopt the Resolution approving the \$10 million lease/leaseback financing and related documents and actions to provide financing for the Community Center.



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November 5, 2020
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022
LoanRFP@losaltosca.gov

Subject: **CITY OF LOS ALTOS FINANCE OF LOS ALTOS COMMUNITY CENTER**

To the City of Los Altos, California:

Sterling National Bank (“SNB”) is pleased to present this proposal (the “Term Sheet”) to City of Los Altos in connection with the above referenced financing request. Working with SNB has several major advantages, including:

- **Experience and Expertise:** Each member of the SNB Public Finance team has significant experience regarding the financing of essential governmental equipment and projects, and can help you document your financing in a manner that complies with applicable local laws.
- **Financial Capability:** The SNB Public Finance team is part of Sterling National Bank, a publicly traded commercial bank, which has the capability of funding tax-exempt financings on a nationwide basis.
- **Reliability:** The SNB Public Finance team prides itself on excellent customer service and the prompt closing of awarded transactions.
- **Simplified Financing Structure:** SNB is proposing to finance the remaining cost of the buildout of the Los Altos Community Center.

We look forward to working with you and your team on this transaction. Should you have any questions, please do not hesitate to contact me.

Respectfully -

John Riddle
John Riddle
Managing Director
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TERM SHEET

TYPE OF FINANCING:	Tax-exempt abatement, lease-leaseback structure, to be treated as a tax exempt fixed rate loan by Sterling National Bank
LESSEE/BORROWER:	City of Los Altos (the "City")
LESSOR/LENDER:	Sterling National Bank, or its designee or Lessor 500 Seventh Avenue, 3 rd Floor New York, NY 10018
PROJECT:	The facilities required for the City to build and complete the Los Altos Community Center and other related facilities and expenditures.
SECURITY:	Library, situated on Civic Center campus adjacent to the new Civic Center Facility on City property (with fair market value equal or greater than amount to be financed).
BOND COUNSEL:	Jones Hall LLP
COUNSEL TO THE LENDER:	Gilmore & Bell, P.C. - At no cost to the Lessee
CLOSING DATE:	December 22, 2020
AMOUNT TO BE FINANCED:	\$10,000,000
LEASE TERM:	19 years, 6 months
INTEREST RATE:	2.29% Locked through Closing
TAX STATUS:	Tax-Exempt and Non-Bank Qualified
FINAL MATURITY:	TBD (06/30/2040 assumed)
PRINCIPAL PAYMENT STRUCTURE:	Due annually, commencing on 06/30/2021 through final maturity and as further outlined in the District's request for proposal dated 9/16/2020
INTEREST PAYMENT STRUCTURE:	Due semi-annually, commencing on 06/30/2021 through final maturity. Based on a 30/360 calculation.
PURCHASE OPTION:	The Lessee shall have the right to pre-pay the Lease in whole, but not in part, on any payment date by paying the Redemption

Price, provided that Lessee gives Lessor at least thirty (30) days prior written notice of its intent to do so. The Redemption Price, as a percentage of the then-outstanding Lease balance, shall be equal to:

Year	Percentage
1 – 5	102%
6- 10	101%
Thereafter	100%

PARTIAL PREPAYMENT OPTION:

Upon at least (30) days' prior written notice to the Lender (unless otherwise waived by the Lender), the Lessee may prepay in part the outstanding principal component of the lease payments on any payment date, at par. Any prepayment in part of the principal component of the lease payments pursuant to this section shall be applied in inverse order of the outstanding principal components of the lease payments unless otherwise agreed to by the Lender. The Lessee may exercise its right of partial prepayment no more than once during any consecutive 12-month period, and any such partial prepayment shall not be in an amount of more than \$500,000.

DOCUMENTATION:

This financing is subject to the execution of mutually acceptable documentation expected to be prepared by Bond Counsel. Documents will include those that are normal and customary for a transaction of this type and size and may include, but are not limited to:

- Site Lease, Lease Purchase Agreement, Assignment Agreement to Lender
- Lessee's Closing Certificate with evidence of authorization
- Corporation's Closing Certificate with evidence of authorization
- Validity & Enforceability Opinions of Lessee's Counsel and Corporation's Counsel (at Lessee's expense)
- Opinion of Lessee's Bond Counsel (at Lessee's expense)
- Tax Certificate and IRS Form 8038-G
- Evidence of Insurance
- Title Insurance Policy in form reasonably acceptable to Lessor

FEES OF THE LESSOR:

None

Any costs of issuance incurred by the Lessee such as financial advisory, and legal counsel shall be the responsibility of the Lessee and can be included in the Amount to be Financed.

ASSIGNMENT BY THE LESSOR:

The Lessor shall have the right at any time to further assign its interest in this financing, but no such assignment shall be effective unless and until a notice has been delivered to the Lessee that discloses the name and address of the Lessor. Such assignment, transfer or conveyance shall be made only to (i) an affiliate of the Lessor or (ii) banks, insurance companies or other financial institutions or their affiliates.

IRS CIRCULAR 230 DISCLOSURE:

The Lessor and its affiliates do not provide tax advice. Accordingly, any discussion of U.S. tax matters contained herein (including any attachments) is not written or intended to be used, and cannot be used, in connection with the promotion, marketing or recommendation by anyone unaffiliated with the Lender of any of the matters addressed herein or for the purpose of avoiding U.S. tax-related penalties.

ADVISORY DISCLOSURE:

The Lessor is not a registered municipal advisor as defined under the Dodd-Frank Wall Street Reform and Consumer Protection Act and its related rules and regulations. In providing this Term Sheet, the Lessor is not providing any advice, advisory services, or recommendations with respect to the structure, timing, terms, or similar matters concerning an issuance of municipal securities. This Term Sheet is a commercial, arms-length proposal that does not create a fiduciary duty by Lessor to the City or the Corporation. The City may engage, separately and at its own cost, an advisor to review this Term Sheet and the proposed transaction on the City's behalf.

CREDIT APPROVAL:

This Term Sheet is subject to formal credit approval by Lender and the execution of mutually acceptable documentation.

PROPOSAL EXPIRATION:

Unless accepted by the Lessee or extended in writing by Lessor at its sole discretion, this Term Sheet shall expire on November 19, 2020. Once accepted, this Term Sheet shall expire if the financing is not completed by December 22, 2020.

Upon receipt of the signed Term Sheet, we will endeavor to provide you with a timely commitment and we will use good faith efforts to close on the financing based on the terms herein. It is a pleasure to offer this financing proposal to the Lessee, and we look forward to your favorable review.

Respectfully –

John Riddle

John Riddle
Managing Director
jriddle@snb.com
www.snb.com

Agreed to and Accepted by:
City of Los Altos, CA.

_____ (Name)

_____ (Title)

_____ (Date)

City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Sources & Uses

Dated 12/22/2020 | Delivered 12/22/2020

Sources Of Funds

Par Amount of Bonds	\$10,000,000.00
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Total Sources	\$10,000,000.00
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Uses Of Funds

Deposit to Project Construction Fund	9,900,000.00
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Costs of Issuance	100,000.00
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Total Uses	\$10,000,000.00
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City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
06/30/2021	502,501.00	2.290%	119,588.89	622,089.89
06/30/2022	404,597.00	2.290%	217,492.72	622,089.72
06/30/2023	413,862.00	2.290%	208,227.46	622,089.46
06/30/2024	423,340.00	2.290%	198,750.02	622,090.02
06/30/2025	433,034.00	2.290%	189,055.54	622,089.54
06/30/2026	442,951.00	2.290%	179,139.06	622,090.06
06/30/2027	453,094.00	2.290%	168,995.48	622,089.48
06/30/2028	463,470.00	2.290%	158,619.62	622,089.62
06/30/2029	474,083.00	2.290%	148,006.16	622,089.16
06/30/2030	484,940.00	2.290%	137,149.66	622,089.66
06/30/2031	496,045.00	2.290%	126,044.54	622,089.54
06/30/2032	507,404.00	2.290%	114,685.10	622,089.10
06/30/2033	519,024.00	2.290%	103,065.54	622,089.54
06/30/2034	530,910.00	2.290%	91,179.90	622,089.90
06/30/2035	543,068.00	2.290%	79,022.06	622,090.06
06/30/2036	555,504.00	2.290%	66,585.80	622,089.80
06/30/2037	568,225.00	2.290%	53,864.76	622,089.76
06/30/2038	581,237.00	2.290%	40,852.40	622,089.40
06/30/2039	594,548.00	2.290%	27,542.08	622,090.08
06/30/2040	608,163.00	2.290%	13,926.94	622,089.94
Total	\$10,000,000.00	-	\$2,441,793.73	\$12,441,793.73

Yield Statistics

Bond Year Dollars	\$106,628.55
Average Life	10.663 Years
Average Coupon	2.2900000%
Net Interest Cost (NIC)	2.2900000%
True Interest Cost (TIC)	2.2899671%
Bond Yield for Arbitrage Purposes	2.2899671%
All Inclusive Cost (AIC)	2.4005157%

IRS Form 8038

Net Interest Cost	2.2900000%
Weighted Average Maturity	10.663 Years

City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Debt Service Schedule

Part 1 of 2

Date	Principal	Coupon	Interest	Total P+I
12/22/2020	-	-	-	-
06/30/2021	502,501.00	2.290%	119,588.89	622,089.89
12/30/2021	-	-	108,746.36	108,746.36
06/30/2022	404,597.00	2.290%	108,746.36	513,343.36
12/30/2022	-	-	104,113.73	104,113.73
06/30/2023	413,862.00	2.290%	104,113.73	517,975.73
12/30/2023	-	-	99,375.01	99,375.01
06/30/2024	423,340.00	2.290%	99,375.01	522,715.01
12/30/2024	-	-	94,527.77	94,527.77
06/30/2025	433,034.00	2.290%	94,527.77	527,561.77
12/30/2025	-	-	89,569.53	89,569.53
06/30/2026	442,951.00	2.290%	89,569.53	532,520.53
12/30/2026	-	-	84,497.74	84,497.74
06/30/2027	453,094.00	2.290%	84,497.74	537,591.74
12/30/2027	-	-	79,309.81	79,309.81
06/30/2028	463,470.00	2.290%	79,309.81	542,779.81
12/30/2028	-	-	74,003.08	74,003.08
06/30/2029	474,083.00	2.290%	74,003.08	548,086.08
12/30/2029	-	-	68,574.83	68,574.83
06/30/2030	484,940.00	2.290%	68,574.83	553,514.83
12/30/2030	-	-	63,022.27	63,022.27
06/30/2031	496,045.00	2.290%	63,022.27	559,067.27
12/30/2031	-	-	57,342.55	57,342.55
06/30/2032	507,404.00	2.290%	57,342.55	564,746.55
12/30/2032	-	-	51,532.77	51,532.77
06/30/2033	519,024.00	2.290%	51,532.77	570,556.77
12/30/2033	-	-	45,589.95	45,589.95
06/30/2034	530,910.00	2.290%	45,589.95	576,499.95
12/30/2034	-	-	39,511.03	39,511.03
06/30/2035	543,068.00	2.290%	39,511.03	582,579.03
12/30/2035	-	-	33,292.90	33,292.90
06/30/2036	555,504.00	2.290%	33,292.90	588,796.90
12/30/2036	-	-	26,932.38	26,932.38
06/30/2037	568,225.00	2.290%	26,932.38	595,157.38
12/30/2037	-	-	20,426.20	20,426.20
06/30/2038	581,237.00	2.290%	20,426.20	601,663.20
12/30/2038	-	-	13,771.04	13,771.04
06/30/2039	594,548.00	2.290%	13,771.04	608,319.04
12/30/2039	-	-	6,963.47	6,963.47
06/30/2040	608,163.00	2.290%	6,963.47	615,126.47
Total	\$10,000,000.00	-	\$2,441,793.73	\$12,441,793.73

City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Debt Service Schedule

Part 2 of 2

Yield Statistics

Bond Year Dollars	\$106,628.55
Average Life	10.663 Years
Average Coupon	2.2900000%
Net Interest Cost (NIC)	2.2900000%
True Interest Cost (TIC)	2.2899671%
Bond Yield for Arbitrage Purposes	2.2899671%
All Inclusive Cost (AIC)	2.4005157%

IRS Form 8038

Net Interest Cost	2.2900000%
Weighted Average Maturity	10.663 Years

City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
06/30/2040	Term 1 Coupon	2.290%	2.290%	10,000,000.00	100.000%	10,000,000.00
Total	-	-	-	\$10,000,000.00	-	\$10,000,000.00

Bid Information

Par Amount of Bonds	\$10,000,000.00
Gross Production	\$10,000,000.00
Bid (100.000%)	10,000,000.00
Total Purchase Price	\$10,000,000.00
Bond Year Dollars	\$106,628.55
Average Life	10.663 Years
Average Coupon	2.2900000%
Net Interest Cost (NIC)	2.2900000%
True Interest Cost (TIC)	2.2899671%

City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Bond Summary Statistics

Maturity	Type	Par Value	Price	Average Coupon	Average Life
06/30/2040	Term 1	10,000,000.00	100.000%	2.290%	10.663 Years
Total	-	\$10,000,000.00	-	-	-

Bond Statistics

Dated	12/22/2020
Delivery Date	12/22/2020
Last Maturity	6/30/2040

Arbitrage Yield	2.2899671%
True Interest Cost (TIC)	2.2899671%
Net Interest Cost (NIC)	2.2900000%
All Inclusive Cost (AIC)	2.4005157%

Average Coupon	2.2900000%
Average Life (years)	10.663 Years

Par Amount	10,000,000.00
Bond Proceeds	10,000,000.00
Total Interest	2,441,793.73
Net Interest	2,441,793.73
Bond Years from Dated Date	106,628,546.22
Bond Years from Delivery Date	106,628,546.22
Total Debt Service	12,441,793.73
Maximum Annual Debt Service	622,090.08
Average Annual Debt Service	622,089.69

Bid (100.000%)	10,000,000.00
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Derivation of True Interest Cost

Par Amount of Bonds	\$10,000,000.00
Total Purchase Price	\$10,000,000.00
True Interest Cost (TIC)	2.2899671%

Derivation of All Inclusive Cost

Par Amount of Bonds	\$10,000,000.00
Costs of Issuance	(100,000.00)
Net Issue Proceeds	\$9,900,000.00
All Inclusive Cost (AIC)	2.4005157%

Derivation of Arbitrage Yield

Par Amount of Bonds	\$10,000,000.00
Original Issue Proceeds	\$10,000,000.00
Bond Yield for Arbitrage Purposes	2.2899671%

11/16/2020 | 11:20 AM

City of Los Altos

2020 Certificates of Participation
(Community Center Project)

Detail Costs Of Issuance

Dated 12/22/2020 | Delivered 12/22/2020

COSTS OF ISSUANCE DETAIL

Bond Counsel	\$55,500.00
Financial Advisor	\$17,500.00
Title Insurance/Opinion	\$11,000.00
Debt Policy Work	\$5,000.00
Counter-Party	\$4,500.00
Counter-Party Legal	\$1,500.00
CDIAC	\$2,500.00
Contingency	\$2,500.00
TOTAL	\$100,000.00

RESOLUTION NO. 2020-43

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
APPROVING A LEASE FINANCING IN AN AGGREGATE PRINCIPAL
AMOUNT NOT TO EXCEED \$10,000,000 TO FINANCE A PORTION OF THE
CONSTRUCTION OF THE NEW COMMUNITY CENTER, AND APPROVING
RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City of Los Altos (the “City”) has determined to acquire and construct a new community center in the City (the “Project”); and

WHEREAS, in order to finance a portion of the cost of the Project, the City has agreed to lease the real property consisting of the Los Altos Main Library located at 13 South San Antonio Road in the City (the “Leased Property”), to the Public Property Financing Corporation of California (the “Corporation”) under a Site Lease (the “Site Lease”) in consideration of the payment by the Corporation of an upfront rental payment (the “Site Lease Payment”) which is sufficient to provide financing for the costs of the Project; and

WHEREAS, the Corporation has agreed to sublease the Leased Property back to the City pursuant to a Lease Agreement (the “Lease Agreement”) in consideration of the payment by the City of lease payments (the “Lease Payments”) for the use and occupancy of the Leased Property; and

WHEREAS, in order to raise the funds needed to pay the Site Lease Payment to the City, the Corporation has agreed to assign certain of its rights under the Site Lease and the Lease Agreement, including the right to receive and enforce payment of the Lease Payments, to Sterling National Bank (the “Assignee”), which will provide financing for the Project in the principal amount of not to exceed \$10,000,000; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into the Site Lease and the Lease Agreement; and

WHEREAS, in accordance with Government Code Section 5852.1, the City has obtained and wishes to disclose the information set forth in Appendix A hereto; and

WHEREAS, there has been presented to this meeting proposed forms of the Site Lease and Lease Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Los Altos as follows:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Approval of Financing Agreements. The City Council hereby approves each of the following agreements required for the financing a portion of the costs of the Project, in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager, any acting, interim, deputy or assistant City Manager, or Administrative Services Director, or the written designee of any of them (each, an “Authorized Officer”), whose execution thereof shall be conclusive evidence of the approval of any such changes or additions. An

Authorized Officer is hereby authorized and directed for and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of each such agreement, as follows:

- Site Lease, between the City as lessor and the Corporation as lessee, under which the City leases the Leased Property to the Corporation in consideration of the payment of the Site Lease Payment.
- Lease Agreement, between the Corporation as lessor and the City as lessee, under which the Corporation leases the Leased Property back to the City and the City agrees to pay semiannual Lease Payments which are sufficient to pay debt service in respect of the financing, in a principal amount not to exceed \$10,000,000, and at an annual interest rate not to exceed 2.29%.

Section 3. Assignment of Rights. The City Council hereby approves the assignment by the Corporation of certain of its rights under the Site Lease and the Lease Agreement, including the right to receive and enforce the payment of the Lease Payments, to the Assignee, pursuant to an Assignment Agreement between the Corporation and the Assignee, under which the Assignee agrees to provide the funds equal to the Site Lease Payment.

Section 4. Official Actions. The Authorized Officers are hereby authorized and directed, for and on behalf of the City, to do any and all things and take any and all actions and execute any and all certificates, agreements, and other documents, including without limitation a term sheet with the Assignee, and to take any and all other actions, in furtherance of and consistent with the transactions contemplated by this Resolution. All actions previously taken by an Authorized Official and the other officers and agents of the City with respect to the transactions contemplated by this Resolution are hereby approved, confirmed and ratified.

Section 5. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

I hereby certify that the foregoing is a full, true and correct copy of a resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof held on the 15th day of December, 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Neysa Fligor, Mayor

ATTEST

Andrea M. Chelemengos, MMC, City Clerk

APPENDIX A

Government Code Section 5852.1 Disclosure

The following information consists of estimates that have been provided in good faith by the municipal advisor to the City:

- (A) True interest cost of the Lease Payments: 2.29%
- (B) Finance charge related to the Lease (sum of all costs of issuance and fees/charges paid to third parties): \$95,000
- (C) Net proceeds to be received (net of finance charges, reserves and capitalized interest, if any): \$9,905,000
- (D) Total payment amount through maturity: \$12,441,793.73

RECORDING REQUESTED BY:
Stewart Title Guaranty Company

AND WHEN RECORDED

RETURN 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 as of December 1, 2020, is between the CITY OF LOS ALTOS, a municipal corporation and general law city organized and existing under the laws of the State of California (the "City"), as lessor, and the PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California ("Corporation"), as lessee.

B A C K G R O U N D :

1. The City has determined to acquire and construct a new community center in the City (the "Project").

2. In order to finance a portion of the cost of the Project, the City has agreed to lease the real property consisting of the Los Altos Main Library located at 13 South San Antonio Road in the City (the "Leased Property"), which is described more fully in Appendix A attached hereto and made a part hereof, to the Corporation under this Site Lease in consideration of the payment by the Corporation of an upfront rental payment (the "Site Lease Payment") which is sufficient to provide financing for a portion of the costs of the Project.

3. The Corporation has agreed to sublease the Leased Property back to the City pursuant to the Lease Agreement dated as of December 1, 2020 (the "Lease"), which has been recorded concurrently herewith, in consideration of the payment by the City of lease payments (the "Lease Payments") for the use and occupancy of the Leased Property thereunder, in the exercise of the common powers of its members.

4. In order to raise the funds needed to pay the Site Lease Payment to the City, the Corporation has assigned certain of its rights under this Site Lease and the Lease, including the right to receive and enforce payment of the Lease Payments, to Sterling National Bank, a national banking association (together with its successors and assigns,

the "Assignee"), under an Assignment Agreement dated as of December 1, 2020 (the "Assignment Agreement"), which has been recorded concurrently herewith.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

SECTION 1. *Lease of Leased Property.* The City hereby leases to the Corporation, and the Corporation hereby leases from the City, the Leased Property on the terms and conditions hereinafter set forth. The City represents and covenants that it is the owner in fee of the Leased Property described on Exhibit A subject only to Permitted Encumbrances and that the Leased Property is properly zoned or approved for the uses contemplated by this Site Lease and the Lease.

SECTION 2. *Term; Possession.* The term of this Site Lease commences, and the Corporation becomes entitled to possession of the Leased Property, as of the date of recordation hereof. This Site Lease ends, and the right of the Corporation hereunder to possession of the Leased Property thereupon ceases, on the date on which all of the outstanding Lease Payments are paid in full, or provision is made for such payment in accordance with the Lease, and the Lease has been terminated in accordance with its terms.

SECTION 3. *Site Lease Payment.* The Corporation shall pay to the City as and for rental of the Leased Property hereunder, the Site Lease Payment in the amount of \$10,000,000 to be paid on the date of execution and delivery hereof. The Corporation shall cause the amount required for such purpose to be provided from the Assignee in accordance with the Assignment Agreement. No other amounts of rental will be due and payable by the Corporation for the use and occupancy of the leased property under this Site Lease.

SECTION 4. *Purpose of this Site Lease; Sublease Back to City.* The purpose for which the City agrees to lease the Leased Property to the Corporation hereunder is to enable the City to finance the Project. The Corporation hereby agrees to sublease the Leased Property back to the City under the Lease.

SECTION 5. *Assignments and Subleases.* The Corporation 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 and the Assignment Agreement, without the prior written consent of the Assignee. Under the Lease, the City has consented to the assignment of this Site Lease to the Assignee.

SECTION 6. *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 7. *Termination.* The Corporation 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 will remain thereon and title thereto will vest thereupon in the City for no additional consideration.

SECTION 8. *Default.* If the Corporation defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, and such default continues for 30 days following notice and demand for correction thereof to the Corporation, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and this Site Lease may not be terminated by the City as a remedy for such default.

Notwithstanding the foregoing, so long as the Lease remains in effect, the City shall continue to pay the Lease Payments to the Assignee in accordance with the Assignment Agreement. In the event of the occurrence of an Event of Default under the Lease, the Corporation may (i) exercise the remedies provided in the Lease, (ii) use the Leased Property for any lawful purpose, subject to any applicable legal limitations or restrictions and (iii) exercise all options provided herein.

SECTION 9. *Amendments.* The Corporation and the City may at any time amend or modify any of the provisions of this Site Lease, but only with the prior written consent of the Assignee.

SECTION 10. *Quiet Enjoyment.* The Corporation at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and other Permitted Encumbrances.

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Corporation are solely liabilities of the Corporation, and the City hereby releases each and every director and officer of the Corporation of and from any personal or individual liability under this Site Lease. No director or officer of the Corporation is at any time or under any circumstances individually or personally liable under this Site Lease for anything done or omitted to be done by the Corporation hereunder.

SECTION 12. *Taxes.* The City will 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, are taken by eminent domain proceedings, the interest of the Corporation will be the aggregate amount of the then unpaid principal components of the Lease Payments payable under the Lease and the balance of the award, if any, will be paid to the City. The City hereby waives any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Leased Property through the eminent domain powers of the City.

SECTION 14. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below.

Notice shall be effective either (a) upon transmission by facsimile transmission or

other form of telecommunication, (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 Corporation, the City and the Assignee 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 Los Altos 1 North San Antonio Road Los Altos, CA 94022 Attention: Administrative Services Director Email: _____
If to the Corporation:	Public Property Financing Corporation of California 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Attention: Chief Executive Officer Email: bmorton@munifinance.com
If to the Assignee:	Sterling National Bank 500 Seventh Avenue, 3rd Floor New York, NY 10018 Attention: Public Sector Finance Email: [coyomba@snb.com]

SECTION 15. *Governing Law.* This Site Lease is governed by the laws of the State of California.

SECTION 16. *Third Party Beneficiary.* The Assignee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 17. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Corporation, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 18. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Site Lease are for any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Site Lease and such invalidity, illegality or unenforceability shall not affect any other provision of this Site Lease, and this Site Lease shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Corporation and the City each hereby declares that it would have entered into this Site Lease and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Site Lease may be held illegal, invalid or unenforceable.

SECTION 19. *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 20. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which is an original but all together constitute one and the same instrument. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Corporation and the City, all with the same force and effect as though the same counterpart had been executed by both the Corporation and the City.

SECTION 21. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Lease.

IN WITNESS WHEREOF, the City and the Corporation 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 LOS ALTOS, as Lessor

By _____
[NAME]
[TITLE]

Attest:

By: _____
Andrea M. Chelemengos, MMC
City Clerk

**PUBLIC PROPERTY FINANCING
CORPORATION OF
CALIFORNIA, as Lessee**

By _____
Stefan A. Morton, Treasurer

FORM OF NOTARY ACKNOWLEDGMENT

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of the following described land located in County of Santa Clara, State of California, together with all buildings, facilities and other improvements constituting real property that are located thereon, and together with the right of ingress and egress:

(End of Legal Description)

RECORDING REQUESTED BY:
Stewart Title Guaranty Company

AND WHEN RECORDED
RETURN 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 as of December 1, 2020, is between the PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), as lessor, and the CITY OF LOS ALTOS, a municipal corporation and general law city organized and existing under the laws of the State of California (the "City"), as lessee.

BACKGROUND:

1. The City has determined to acquire and construct a new community center in the City (the "Project").
2. In order to finance a portion of the cost of the Project, the City has agreed to lease the real property consisting of the Los Altos Main Library located at 13 South San Antonio Road in the City (the "Leased Property"), which is described more fully in Appendix A attached hereto and made a part hereof, to the Corporation under a Site Lease dated as of December 1, 2020 (the "Site Lease"), which has been recorded concurrently herewith, in consideration of the payment by the Corporation of an upfront rental payment (the "Site Lease Payment") which is sufficient to provide financing for the costs of the Project.
3. The Corporation has agreed to sublease the Leased Property back to the City pursuant to this Lease in consideration of the payment by the City of lease payments (the "Lease Payments") for the use and occupancy of the Leased Property hereunder, in the exercise of the common powers of its members.
4. In order to raise the funds needed to pay the Site Lease Payment to the City, the Corporation has assigned certain of its rights under the Site Lease and this Lease, including the right to receive and enforce payment of the Lease Payments, to Sterling National Bank, a national banking association (together with its successors and assigns,

the “Assignee”), under an Assignment Agreement dated as of December 1, 2020 (the “Assignment Agreement”), which has been recorded concurrently herewith.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* All terms defined in this Section 1.1 have the respective meanings herein specified for all purposes of this Lease. Terms defined in the recitals of this Lease and not otherwise defined in this Section 1.1 have the respective meanings given such terms in the recitals.

“Additional Payments” means any and all amounts payable by the City hereunder (other than Lease Payments), including rebate payments to the federal government.

“Applicable Environmental Laws” means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001, et seq.; the Clean Water Act, 33 U.S.C. Section 1321 et seq.; the Resource Conservation and Recovery Act, 42 USC Sections 6901 et seq.; the California Hazardous Waste Control Law, California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act, California Health & Safety Code sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. Section 2601 et seq.; the Asbestos Hazard Emergency Response Act and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, and any so called local, state or federal “superfund” or “superlien” law, in each case, as each of the foregoing may be amended and in each case including the regulations under each of the foregoing, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“Assignee” means Sterling National Bank, a national banking association and its successors and assigns as assignee of certain rights of the Corporation hereunder, and its successors and assigns.

“Assignment Agreement” means the Assignment Agreement dated as of December 1, 2020, between the Corporation, as assignor, and the Assignee, as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

“Bond Counsel” means Jones Hall, A Professional Law Corporation, or any attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“Business Day” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California.

“City” means the City of Los Altos, a municipal corporation and general law city organized and existing under the laws of the State of California.

“Closing Date” means the date of execution and delivery of this Lease by the parties hereto, being December ____, 2020.

“Corporation” means the Public Property Financing Corporation of California, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

“Event of Default” means any of the events of default as defined in Section 8.1.

“Federal Securities” means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“Fiscal Year” means each twelve-month period during the Term of this Lease commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

“Hazardous Substance” any substance that is, at any time, listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or is determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the facilities, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.).

“Interest Rate” means an interest rate of 2.29% per annum applicable to the Lease Payments.

“Lease” means this Lease Agreement dated as of December 1, 2020, between the Corporation, as lessor, and the City, as lessee, as originally executed or as thereafter amended under any duly authorized and executed amendments hereto.

“Lease Payment” means all payments required to be paid by the City under Section 4.3, including any prepayment thereof under Sections 9.2 or 9.3.

“Lease Payment Date” means June 30 and December 30 of each year, commencing June 30, 2021, and continuing to and including the date on which the Lease Payments are paid in full.

“Leased Property” means the real property more particularly described in Appendix A, including the structures situated thereon. From and after the date of any substitution of property under Section 4.6 or release of property under Section 4.7, the term “Leased Property” means the real property that remains subject to this Lease following such substitution or release.

“Net Proceeds” means amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Property, or the proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

“Permitted Encumbrances” means, as of any time:

- (a) liens for general *ad valorem* taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease;
- (b) the Site Lease, this Lease and the Assignment Agreement;
- (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law;
- (d) an unrecorded lease entitled “Lease Agreement” entered into in May 1991 between the City, as lessor, and the County of Santa Clara (the “County”), as lessee, the County’s rights under which has been assigned to the Santa Clara County Library Joint Powers Authority;
- (e) the exceptions disclosed in the title insurance policy issued by Stewart Title with respect to the Leased Property in connection with this Lease, which the City certifies in writing to the Corporation and the Assignee will not interfere with the City’s beneficial use and enjoyment of, or otherwise adversely affect the intended use of, the Leased Property, or adversely affect the rights and interests of the Corporation or the Assignee under this Lease, the Site Lease or the Assignment Agreement; and
- (f) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record.

“Rental Period” means each period during the Term of the Lease commencing on and including June 30 in each year and extending to and including the next succeeding June 29. The first Rental Period begins on the Closing Date and ends on June 29, 2021.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Taxable Equivalent Rate” means [3.05]%.

“Term of this Lease” or “Term” means the time during which this Lease is in effect, as provided in Section 4.2.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include 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 Corporation as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The City a municipal corporation and general law city organized and 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 and to carry out and consummate all transactions contemplated thereby and 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 each been duly authorized, executed and delivered by the City and each constitutes the legal, valid and binding agreement of the City enforceable against the City in accordance with its terms.
- (d) No Conflicts. The execution and delivery of the Site Lease and this Lease, 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 conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease or this Lease 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 by the City of the Site Lease and this Lease, or the consummation of any transaction therein or herein contemplated, except as have been obtained or made and as are in full force and effect, or except as would not materially adversely affect the transactions contemplated hereby.
- (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 or this Lease 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 or this Lease, or the financial condition, assets, properties or operations of the City.

- (g) Essential Purpose. The Leased Property and the financing pursuant to this Lease and the Assignment Agreement are essential to the City's efficient and economic operation, and are in the best interests of the City. During the term of this Lease, the Leased Property will be used by the City only for the purpose of performing one or more essential functions of the City consistent with the permissible scope of the City's authority.
- (h) Available Funds. The City has funds available for the payment of Lease Payments due during the current Fiscal Year and reasonably believes that sufficient funds can be obtained to make all Lease Payments and payments of other amounts required to be paid hereunder.
- (i) No Defaults. The City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease, or under any of its bonds, notes, or other debt obligations.
- (j) Title to Leased Property; Encumbrances. The City is the owner in fee of the Leased Property and title to the Leased Property shall remain in the City, subject to the rights of the Corporation hereunder and under the Site Lease and subject to Permitted Encumbrances.
- (k) No lien or encumbrance on the Leased Property materially impairs the City's use of the Leased Property for the purposes for which it is, or may reasonably be expected to be, held. This Lease is the only lease that encumbers the Leased Property. The Leased Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the District's use of the Leased Property as contemplated in this Lease.
- (l) Flood Hazard. The Leased Property is not located in a "Special Flood Hazard Area" shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map used in connection with the National Flood Insurance Program and has not been subject to material damage from flooding.
- (m) Insured Value. The insured value of the Leased Property, based on replacement cost, is not less than the aggregate principal component of all of the Lease Payments.
- (n) Useful Life. The buildings located on the Leased Property have a remaining useful life that extends to at least June 30, 2040.
- (o) Hazardous Materials. To the best of the City's knowledge, the Leased Property is free of all hazardous materials that would impair

the City's use of the Leased Property for the purposes for which it is, or may reasonably be expected to be, held or that will materially adversely affect the ability of the City to perform its obligations under this Lease.

- (p) Financial Statements. The financial statements of the City for the year ended June 30, 2019, supplied to the Assignee fairly present the City's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Assignee, there has been no material adverse change in the City's financial condition subsequent to June 30, 2019.
- (q) Taxes and Assessments. All taxes, assessments or impositions of any kind with respect to the Leased Property, except current taxes, have been paid.
- (r) The Leased Property. The City has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the Assignee's interest in any property now or hereafter included in the Leased Property shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Lease.

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

- (a) Due Organization and Existence. The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, has full legal right, power and authority to enter into the Site Lease, this Lease and the Assignment Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery of the Site Lease, this Lease and the Assignment Agreement.
- (b) Due Execution. The representatives of the Corporation executing the Site Lease, this Lease and the Assignment Agreement are fully authorized to execute the same under official action taken by the governing board of the Corporation.
- (c) Valid, Binding and Enforceable Obligations. The Site Lease, this Lease and the Assignment Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of the Site Lease, this Lease and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, 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 Corporation 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 Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease, this Lease or the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, 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 by the Corporation of the Site Lease, this Lease or the Assignment Agreement, 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, or except as would not materially adversely effect the transactions contemplated hereby.

- (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 Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation 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, this Lease or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation 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, this Lease or the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS

SECTION 3.1. *Deposit of and Application of Funds.* On the Closing Date, the Corporation shall cause the amount of \$10,000,000, constituting the full amount of the Site Lease Payment, to be applied as follows:

- (a) \$95,000 shall be transferred to the Assignee and used by the Assignee to pay the costs of the financing pursuant to written instructions provided by the City.
- (b) \$9,905,000, constituting the remainder of the Site Lease Payment, shall be deposited into the Project Fund, to be applied to pay the costs of the Project.

SECTION 3.2. *Construction of Project.* The City will enter into, administer and enforce all purchase orders or other contracts relating to the acquisition, construction and installation of the Project. The City will pay the costs of the Project from amounts held by it in the Project Fund. All contracts for, and all work relating to, the acquisition and construction of the Project shall be subject to all applicable provisions of law relating to the acquisition, construction, improvement, and installation of like facilities and property by the City.

SECTION 3.3. *Completion of Project; Certification of Completion.* The City expects that the Project will be substantially completed by _____, 20____. The failure to complete the Project by such date will not constitute an Event of Default hereunder or a grounds for termination of this Lease.

Upon the completion of the acquisition and construction of the Project, but in any event not later than 30 days following such completion, the City shall execute and deliver to the Assignee a written certificate that:

- (a) states that the acquisition, construction and installation of the Project has been substantially completed, and
- (b) identifies the amounts, if any, to remain on deposit in the Project Fund for payment of costs of the Project thereafter.

All amounts in the Project Fund in excess of the amounts retained therein for payment of future costs of the Project (as identified in such written certificate of the City, if any) (the "Excess Project Funds") will be transferred to the Assignee and applied to pay or prepay the Lease Payments under Section 9.2(b).

ARTICLE IV

LEASE OF LEASED PROPERTY; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property by City to Corporation.* For and in consideration of the application by the Corporation of funds in accordance with Section

3.1, the City has leased the Leased Property to the Corporation under the Site Lease. For and in consideration of the Lease Payments to be made by the City hereunder, the Corporation hereby leases the Leased Property to the City and the City hereby leases the Leased Property from the Corporation, upon the terms and provisions hereof.

SECTION 4.2. *Term.* The Term of this Lease commences on the Closing Date and ends on the date on which all of the Lease Payments have been paid in full. If the obligation of the City to pay Lease Payments is abated for any period under Section 6.3 hereof, the term of this Lease shall extend until such time as all Lease Payments have been paid in full, provided that the term of this Lease shall not extend more than ten years following the last Lease Payment Date shown on Appendix B.

SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Section 6.3 and the provisions of Article IX, the City agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Appendix B attached hereto and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Appendix B.

The Lease Payments payable in any Rental Period with respect to the Leased Property shall be for the use of the Leased Property during such Rental Period.

The interest components of the Lease Payments have been calculated based on the unpaid principal components of the Lease Payments and an interest rate of [2.290]% per annum, on the basis of a 360-day year of twelve 30-day months.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2(a) 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(b) or 9.3, the remaining Lease Payments will be reduced such that approximately level Lease Payments prevail following such prepayment, as set forth in a revised schedule of Lease Payments which is provided to the City by the Assignee and shall supersede and replace the existing schedule of Lease Payments set forth on Appendix B hereto without the need for further amendment to this Lease.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.3, 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 rate of [5.00]% per annum.

(d) Taxable Equivalent Rate. If it is determined that any of the interest components of Lease Payments may not be excluded from gross income for purposes of federal income taxation due to any action or inaction by the City, the Interest Rate shall be adjusted to the Taxable Equivalent Rate for the remainder of the term of this Lease.

(e) Fair Rental Value. The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and will be paid 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 this determination, consideration has been given to the estimated fair market value of the Leased Property, the replacement cost of the Leased Property, the costs of financing the deposit required to be made under Section 3.1, other obligations of the City and the Corporation 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.

(f) Source of Payments; Budget and Appropriation. The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.3 and 9.1. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are 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.

(g) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section 4.3 and all amounts payable by the City under Article IX.

SECTION 4.4. *Quiet Enjoyment.* Throughout the Term of this Lease, the Corporation will 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 Corporation, except as expressly set forth in this Lease. The Corporation 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 Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.5. *Title.* At all times during the Term of this Lease, the Corporation shall hold leasehold title to the Leased Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.2.

Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Corporation in and to the Leased Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Leased Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Corporation in and to the Leased Property shall be transferred to and vested in the City. The Corporation agrees to 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.

SECTION 4.6. *Substitution of Property.* With the prior written consent of the Assignee (which shall not be unreasonably withheld), the City may substitute other unencumbered real property (the "Substitute Property") for the Leased Property or any portion thereof (the "Former Property"), provided that the City has satisfied 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 Corporation and the Assignee, and caused to be recorded in the Office of the Santa Clara County Recorder sufficient memorialization of, an amended Appendix A to this Lease which adds thereto a description of such Substitute Property and deletes therefrom the description of such Former Property.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Substitute Property, in an amount at least equal to the aggregate unpaid principal components of the Lease Payments and naming the Assignee as an additional insured.
- (d) The City has certified in writing to the Corporation and the Assignee that such Substitute Property serves the governmental 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. No event giving rise to an abatement of Lease Payments has occurred or is continuing with respect to the Substitute Property.
- (f) The City has certified in writing to the Corporation and the Assignee that the estimated value and the estimated fair rental value of the Leased Property, after giving effect to the proposed substitution, are no less than the maximum annual Lease Payments remaining unpaid hereunder at the time of the proposed substitution.
- (g) The City has delivered to the Corporation and the Assignee an Opinion of Bond Counsel to the effect that such substitution of Leased Property will not, in and of itself, cause the interest component of Lease Payments to be included in gross income for federal income tax purposes.
- (h) No event giving rise to an abatement of Lease Payments has occurred or is continuing with respect to the Substitute Property.

SECTION 4.7. *Release of Property.* With the prior written consent of the Assignee, the City may 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.
- (b) The City has filed with the Corporation and the Assignee, and caused to be recorded in the Office of the Santa Clara County Recorder sufficient memorialization of, an amendment hereof which removes the Released Property from this Lease.
- (c) The City has certified in writing to the Corporation and the Assignee that the value of the property that remains subject to this Lease following such release is at least equal to the aggregate unpaid principal components of the Lease Payments, and 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 delivered to the Corporation and the Assignee an Opinion of Bond Counsel to the effect that such release of Leased Property will not, in and of itself, cause the interest portion of Lease Payments to be included in income for federal income tax purposes.
- (e) No event giving rise to an abatement of Lease Payments has occurred or is continuing with respect to the property that remains subject to this Lease following such release.

Upon written consent of the Assignee and 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 Corporation and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease and the Assignment Agreement of record against the Released Property.

SECTION 4.8. *No Merger.* It is the express intention of the Corporation and the City that this Lease and the obligations of the parties hereunder are 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 no merger of title or interest may occur or be deemed to occur as a result of the respective positions of the Corporation and the City thereunder and hereunder.

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 sole 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, internet, television, light, heating, water, sewer and all other utility services; and the City shall 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 on the part of the City or any assignee.

In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Leased Property, as hereinbefore more specifically set forth. 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 will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation 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 is obligated to 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 the City's 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 Corporation notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation 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 will promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

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.

SECTION 5.3. *Public Liability Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease a standard comprehensive general insurance policy or policies in protection of the City, the Corporation 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 amount, and 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 authority or other program providing

pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

SECTION 5.4. *Casualty Insurance.*

(a) Requirement to Maintain Casualty Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, casualty insurance against loss or damage to the buildings and other improvements at any time situated on the Leased Property by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance and sprinkler system leakage insurance. Said extended coverage 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.

Such insurance shall be in an amount at least equal to the aggregate unpaid principal components of the Lease Payments, and 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 authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Article VI.

(b) Self-Insurance. As an alternative to providing the insurance required by this Section, the City may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection (i) affords reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State of California other than the City, and (ii) has been approved in writing by the Assignee.

Before such other method or plan may be provided by the City, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Lease, there shall be filed with the Corporation and the Assignee a certificate of an actuary, insurance consultant or other qualified person (who may be an employee of the City), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable coverage for the risks required to be insured against. There shall also be filed a certificate of the City setting forth the details of such substitute method or plan. In the event of loss covered by any such self-insurance method, the liability of the City hereunder shall be limited to the amounts in the self-insurance reserve fund or funds created under such method.

SECTION 5.5. *Rental Interruption Insurance.* The City will, at its own expense, procure and maintain, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Leased Property and the improvements situated thereon 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 Lease Payments coming due and payable during any future 24-month period.

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 authority or other program providing pooled insurance. Such rental interruption or use and occupancy insurance shall not be self-insured and the City acknowledges that this requirement may limit its ability to self-insure under Section 5.4. The City will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Worker's Compensation Insurance.* If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Leased Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease.

SECTION 5.7. *Recordation Hereof; Title Insurance.* On or before the Closing Date, the City shall, at its expense, (a) cause the Assignment Agreement, the Site Lease and this Lease, or a memorandum hereof or thereof, to be recorded in the Office of the Santa Clara County Recorder with respect to the Leased Property, and (b) obtain a CLTA title insurance policy insuring the Corporation's interests in the estate established hereunder in the Leased Property, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Lease Payments. The City will apply the Net Proceeds received under such title insurance policy to prepay the remaining Lease Payments under Section 9.3.

SECTION 5.8. *Form of Policies.* All insurance policies (or riders) required by this Article V shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States of America and qualified to do business in the State of California, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective.

Each insurance policy or rider required by Sections 5.3, 5.4 and 5.5 shall name the City and the Assignee as insured parties and the Assignee as loss payee and shall include a lender's loss payable endorsement for the benefit of the Assignee. Prior to the Closing Date, the City will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Assignee of such fact.

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. All such items shall remain the sole property of the City, in which the Corporation has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items.

Nothing in this Lease 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, provided that no such lien or security interest may attach to any part of the Leased Property.

SECTION 5.10. *Liens.* The City will 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 Corporation do not materially and adversely affect the leasehold estate in the Leased Property hereunder and for which the Assignee approves in writing.

Except as expressly provided in this Article V, 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, if the same shall arise at any time. The City will reimburse the Corporation 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 Corporation may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.3(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF PROCEEDS; ABATEMENT OF LEASE PAYMENTS

SECTION 6.1. *Deposit of Net Proceeds.* The Net Proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings, and the Net Proceeds of any policy of insurance maintained under Section 5.4, shall be paid to the City or the Corporation to be applied as set forth in Section 6.2.

SECTION 6.2. *Application of Net Proceeds.* If the Leased Property is taken in eminent domain proceedings at any time during the Term of this Lease, or if the Leased Property is damaged due to an insured casualty which is covered by a policy of insurance or a program of self-insurance maintained under Section 5.4, the City shall as soon as practicable after such event, with the prior written consent of the Assignee, apply the Net Proceeds resulting therefrom either to:

- (a) repair the Leased Property to full use;
- (b) replace the Leased Property, at the City's sole cost and expense, with property of equal or greater value to the Leased Property immediately prior to the time of the such destruction or damage, such replacement Leased Property to be subject to the Assignee's

reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement;

- (c) substitute additional property as provided in Section 4.6; or
- (d) prepay the Lease Payments in accordance with Section 9.3.

The City will notify the Corporation and the Assignee of which course of action it has elected to take within a reasonable time not to exceed 30 days after the occurrence of such eminent domain proceedings or such destruction or damage. Such repair, replacement, substitution or prepayment shall commence not later than 60 days after the occurrence of such taking, destruction or damage and be pursued diligently to completion. The Corporation may (but is not required to) in its own name or in the City's name execute and deliver proofs of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy, and the City hereby grants to the Corporation a power of attorney coupled with an interest to accomplish all or any of the foregoing.

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 jointly by the City and the Assignee 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 will continue in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

Notwithstanding the foregoing, the Lease Payments are not subject to abatement to the extent that rental interruption insurance proceeds are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such amounts constitute special funds for the payment of the Lease Payments.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE CORPORATION 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 CORPORATION 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.

In no event is the Corporation liable 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 Corporation, and the Corporation's successors or assigns, has the right at all reasonable times, following at least 48 hours' written notice provided to the City, to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Corporation, and the Corporation's successors or assigns, shall have such rights of access to the Leased Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder. Neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City hereby agrees to indemnify the Corporation, the Assignee and their respective directors, officers, employees, agents, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of

- (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,
- (f) the use, presence, storage, disposal or clean-up of any Hazardous Substances or toxic wastes on the Leased Property,
- (g) the failure to comply with any Applicable Environmental Laws, or
- (h) any loss of the federal income tax exemption of the interest portion of Lease Payments and any interest or penalties imposed by the Internal Revenue

Service on the Assignee in connection therewith, any such amount with respect to past Lease Payments to be paid to the Assignee in a single lump sum payment upon demand of the Assignee, and any such amount with respect to future Lease Payments to be paid as an increase in the interest component of Lease Payments such that the after tax yield to the Assignee shall remain the same following the loss of the federal income tax exemption as it was before such loss of tax exemption.

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

SECTION 7.4. *Assignment by the Corporation.* The Corporation's rights under this Lease, including the right to receive and enforce payment of the Lease Payments to be made by the City hereunder, have been assigned to the Assignee under the Assignment Agreement. The City hereby consents to such assignment. Whenever in this Lease any reference is made to the Corporation and such reference concerns rights that the Corporation has assigned to the Assignee, such reference shall be deemed to refer to the Assignee.

The Corporation and the Assignee may make additional assignments of their interests herein in whole or in part to one or more assignees or subassignees, but no such assignment will be effective as against the City unless and until the Corporation or the Assignee has filed with the City written notice thereof; *provided*, that any such assignment, transfer or conveyance

- (a) shall be made only to investors each of whom the transferor Assignee reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act or an "*accredited investor*" as defined in Sections 501(a)(1), (2), (3) and (7) of Regulation D promulgated under the Securities Act and is purchasing this Lease (or any interest therein) for its own account with no present intention to resell or distribute this Lease (or interest therein), subject to each investor's right at any time to dispose of this Lease or any interest therein as it determines to be in its best interests,
- (b) shall not result in more than 35 owners of this Lease or the creation of any interest in this Lease in an aggregate principal component that is less than \$100,000 and
- (iii) shall not require the City to make Lease Payments, send notices or otherwise deal with respect to matters arising under this Lease with or to more than one trustee, owner, servicer or other fiduciary or agent.

The City shall pay all Lease Payments hereunder under the written direction of the Corporation or the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease, the City will keep a complete and accurate record of all such notices of assignment.

SECTION 7.5. *Assignment and Subleasing by the City.* This Lease may not be assigned by the City. With the prior written consent of the Assignee, 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 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 Corporation and the Assignee a true and complete copy of such sublease.
- (c) Any sublease shall be expressly subject and subordinate to this Lease.
- (d) No such sublease by the City may cause the Leased Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State of California.
- (e) The City shall furnish the Corporation and the Assignee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.6. *Amendment Hereof.* The Corporation and the City may at any time amend or modify any of the provisions of this Lease, but only with the prior written consent of the Assignee. Prior to the effective date of any such amendment, and as a condition precedent to the effectiveness thereof, the City at its expense shall obtain an opinion of Bond Counsel stating that such amendment will not adversely affect the exclusion from gross income of the interest component of the Lease Payments.

SECTION 7.7. *Tax Covenants.*

(a) Generally. The City will not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Lease Payments to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The City will ensure that the proceeds of the Lease Payments are not so used as to cause the City's obligations hereunder 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.

(c) Federal Guarantee Prohibition. The City will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Lease Payments 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 Lease Payments to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Arbitrage Rebate. The City will take any and all actions necessary to assure compliance with Section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Lease Payments.

(f) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to this Lease for at least three years after this Lease matures or all Lease Payments are prepaid (whichever is earlier); however, if the Lease Payments are prepaid, the City will retain its records of accounting and monitoring at least three years after the earlier of the maturity or prepayment of the obligations that prepaid the Lease Payments.

(g) Compliance with Tax Certificate. The City will comply with the provisions of the Tax Certificate and the Use of Proceeds Certificate which are part of the transcript of the proceedings with respect to this Lease, which are incorporated herein as if fully set forth herein.

The covenants of this Section shall survive payment in full or defeasance of the Lease Payments.

SECTION 7.8 *Environmental Covenants.*

(a) Compliance with Laws; No Hazardous Substances. The City will comply with all Applicable Environmental Laws with respect to the Leased Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Leased Property.

(b) Notification of Assignee. The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Leased Property and any operations conducted thereon or any conditions existing thereon to the Assignee, and the City will notify the Assignee in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substances that has occurred or is occurring that in any way affects or threatens to affect the Leased Property, or the people, structures, or other property thereon, provided that no such notifications shall create any liability or obligation on the part of the Assignee.

(c) Access for Inspection. The City shall permit the Assignee, its agents, or any experts designated by the Assignee to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Assignee has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

SECTION 7.9 *Financial Statements; Budgets*. Within nine months following the end of each Fiscal Year of the City during the Term of this Lease, the City shall provide

the Assignee with a copy of its audited financial statements for such Fiscal Year. Such audited financial statements shall include a balance sheet, a statement of revenues, expenses and changes in fund balances for budget and actual, a statement of cash flows, notes, schedules and any attachments to the financial statements and such other financial information as the Assignee may reasonably request. At the request of the Assignee, the City will provide the Assignee with a copy of its annual budget for any Fiscal Year and any interim updates or modifications to such budget.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

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

- (a) Failure by the City to pay any Lease Payment, Additional Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to maintain insurance in form and substance as required by Article V, provided that the City shall be permitted a grace period of five days before such failure constitutes an Event of Default.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clauses (a) and (b) of this Section, 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 Corporation or the Assignee. However, 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 Corporation and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.
- (d) 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.
- (e) Any representation, warranty or certification made by the City hereunder or in connection herewith was incorrect or misleading when made.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease; *provided, however,* that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable.

Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; provided, that no termination of this Lease shall 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 Corporation may exercise any one or more of the following remedies:

- (a) Enforcement of Payments Without Termination. If the Corporation 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 Corporation for any deficiency arising out of the re-leasing of the Leased Property, or, if the Corporation 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 Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Corporation. The City hereby irrevocably appoints the Corporation 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 such property in storage or other suitable place located as close as possible to the City in the City for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Corporation 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 property by the Corporation or its duly authorized agents in accordance with the provisions herein contained.

The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Corporation 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 Corporation 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 Corporation 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 Corporation for the purpose of enabling the Leased Property to be re-let under this paragraph (a), and the City further waives the right to any rental obtained by the Corporation in excess of the Lease Payments and hereby conveys and releases such excess to the Corporation as compensation to the Corporation for its services in re-leasing the Leased Property.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Corporation terminates this Lease at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Leased Property by the Corporation in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Corporation 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 Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease.

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 Corporation 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 Corporation has given written notice to the City of the election on the part of the Corporation 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 Corporation by such written notice.

- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Corporation 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.
- (d) Remedies under the Site Lease. If an Event of Default occurs and continues hereunder, the Corporation may exercise its rights under the Site Lease.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be 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 shall impair any such right or power or shall be construed to be 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 Corporation to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Lease defaults under any of the provisions hereof and the nondefaulting party or the Assignee should employ attorneys (including in-house legal counsel) or incur 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 agrees that it will on demand therefor pay to the nondefaulting or the Assignee, as applicable, party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party or the Assignee, as applicable.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Lease is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

SECTION 8.6. *Assignee to Exercise Rights.* Such rights and remedies as are given to the Corporation under this Article VIII have been assigned by the Corporation to the Assignee, to which assignment the City hereby consents. Such rights and remedies shall be exercised solely by the Assignee.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.*

(a) Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with a fiduciary acceptable to the Assignee, in trust, an amount of cash which is either

- (i) 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
- (ii) with the prior written consent of the Assignee, invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments, in an amount which is sufficient, in the opinion of an independent certified public accountant acceptable to the Assignee, together with interest to accrue thereon and together with any

cash which is so deposited, without reinvestment, to pay such Lease Payments when due under Section 4.3(a) or when due on any optional prepayment date under Section 9.2(a), as the City instructs at the time of said deposit; *provided, however*, that at or prior to the date on which any such security deposit is established, the City shall deliver to the Assignee an opinion of Bond Counsel (in form and substance acceptable to the Assignee) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the owners thereof for federal income tax purposes.

- (b) In the event of a security deposit under this Section with respect to all unpaid Lease Payments,
 - (i) the Term of this Lease shall continue,
 - (ii) all obligations of the City under this Lease, and all security provided by this Lease for said obligations, shall thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of the Lease Payments from such security deposit and the obligation of the City to cure any deficiency in the security deposit, and
 - (iii) under Section 4.5, 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 Corporation.

The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Corporation and the Assignee. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2 *Optional Prepayment.*

(a) Prepayment in Whole. The City may prepay the unpaid principal components of the Lease Payments, in whole, on any Lease Payment Date, by paying a prepayment price equal to the principal components of the Lease Payments to be prepaid, plus accrued interest on such prepaid principal components to the prepayment date, plus the prepayment premium set forth below:

<u>Prepayment Date</u>	<u>Prepayment Premium</u>
June 30, 2021 through December 30, 2025	2.00%
June 30, 2026 through December 30, 2030 –	1.00%
June 30, 2031 and thereafter	0.00%

The City shall give the Corporation and the Assignee written notice of its intention to exercise its option to prepay the Lease Payments under this Section 9.2(a) not less than 30 days in advance of the date of exercise.

(b) Prepayment in Part. The City may exercise its option to prepay the principal components of the Lease Payments, in part, on any Lease Payment Date, from any source including any Net Proceeds to be used for such purpose under Section 6.2, by paying a prepayment price equal to the principal components of the Lease Payments to be prepaid, plus accrued interest on such prepaid principal components to the prepayment date, without premium, with such prepayment to be applied in inverse order of the outstanding principal components of the Lease Payments unless otherwise agreed to by the Lender. The City may exercise its right of partial prepayment no more than once during any consecutive 12-month period, and any such partial prepayment shall not be in an amount of more than \$500,000.

The City shall give the Corporation and the Assignee (unless otherwise waived by the Assignee) written notice of its intention to exercise its option to prepay the Lease Payments under this Section 9.2(b) not less than 30 days in advance of the date of exercise.

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 facsimile transmission or other form of telecommunication, at its number set forth below.

Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (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 Corporation, the City and the Assignee 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 Los Altos 1 North San Antonio Road Los Altos, CA 94022 Attention: Administrative Services Director Email: _____
If to the Corporation:	Public Property Financing Corporation of California 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Attention: Chief Executive Officer Email: bmorton@munifinance.com
If to the Assignee:	Sterling National Bank 500 Seventh Avenue, 3rd Floor New York, NY 10018 Attention: Public Sector Finance Email: [coyomba@snb.com]

SECTION 10.2. *Binding Effect.* This Lease inures to the benefit of and is binding upon the Corporation, 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 a “net-net-net lease” and the City hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Further Assurances and Corrective Instruments.* The Corporation and the City agree that they will, 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 10.6. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

SECTION 10.7. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.8. *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 10.9. *Third Party Beneficiary.* The Assignee is made a party beneficiary hereunder with all rights of a third party beneficiary.

IN WITNESS WHEREOF, the Corporation 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.

**PUBLIC PROPERTY FINANCING
CORPORATION OF CALIFORNIA,**
as Lessor

By _____
Stefan A. Morton, Treasurer

CITY OF LOS ALTOS, as Lessee

By _____
[NAME]
[TITLE]

Attest:

By: _____
Andrea M. Chelemengos, MMC
City Clerk

FORM OF NOTARY ACKNOWLEDGMENT

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of the following described land located in County of Santa Clara, State of California, together with all buildings, facilities and other improvements constituting real property that are located thereon, and together with the right of ingress and egress:

(End of Legal Description)

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
June 30, 2021	\$502,501.00	\$119,588.89	\$622,089.89
Dec. 30, 2021	-	108,746.36	108,746.36
June 30, 2022	404,597.00	108,746.36	513,343.36
Dec. 30, 2022	-	104,113.73	104,113.73
June 30, 2023	413,862.00	104,113.73	517,975.73
Dec. 30, 2023	-	99,375.01	99,375.01
June 30, 2024	423,340.00	99,375.01	522,715.01
Dec. 30, 2024	-	94,527.77	94,527.77
June 30, 2025	433,034.00	94,527.77	527,561.77
Dec. 30, 2025	-	89,569.53	89,569.53
June 30, 2026	442,951.00	89,569.53	532,520.53
Dec. 30, 2026	-	84,497.74	84,497.74
June 30, 2027	453,094.00	84,497.74	537,591.74
Dec. 30, 2027	-	79,309.81	79,309.81
June 30, 2028	463,470.00	79,309.81	542,779.81
Dec. 30, 2028	-	74,003.08	74,003.08
June 30, 2029	474,083.00	74,003.08	548,086.08
Dec. 30, 2029	-	68,574.83	68,574.83
June 30, 2030	484,940.00	68,574.83	553,514.83
Dec. 30, 2030	-	63,022.27	63,022.27
June 30, 2031	496,045.00	63,022.27	559,067.27
Dec. 30, 2031	-	57,342.55	57,342.55
June 30, 2032	507,404.00	57,342.55	564,746.55
Dec. 30, 2032	-	51,532.77	51,532.77
June 30, 2033	519,024.00	51,532.77	570,556.77
Dec. 30, 2033	-	45,589.95	45,589.95
June 30, 2034	530,910.00	45,589.95	576,499.95
Dec. 30, 2034	-	39,511.03	39,511.03
June 30, 2035	543,068.00	39,511.03	582,579.03
Dec. 30, 2035	-	33,292.90	33,292.90
June 30, 2036	555,504.00	33,292.90	588,796.90
Dec. 30, 2036	-	26,932.38	26,932.38
June 30, 2037	568,225.00	26,932.38	595,157.38
Dec. 30, 2037	-	20,426.20	20,426.20
June 30, 2038	581,237.00	20,426.20	601,663.20
Dec. 30, 2038	-	13,771.04	13,771.04
June 30, 2039	594,548.00	13,771.04	608,319.04
Dec. 30, 2039	-	6,963.47	6,963.47
June 30, 2040	608,163.00	6,963.47	615,126.47
	<u>\$10,000,000.00</u>	<u>\$2,441,793.73</u>	<u>\$12,441,793.73</u>