
LEASE AGREEMENT

Dated as of June 1, 2023

by and between the

**BRISBANE/GUADALUPE VALLEY MUNICIPAL
IMPROVEMENT DISTRICT FINANCING AUTHORITY, as Lessor**

and the

CITY OF BRISBANE, CALIFORNIA, as Lessee

Relating to:

\$_____

Brisbane/Guadalupe Valley Municipal
Improvement District Financing Authority
Lease Revenue Bonds, Series 2023

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EXHIBIT A:	DESCRIPTION OF THE SITE
EXHIBIT B:	DESCRIPTION OF THE FACILITY
EXHIBIT C:	SCHEDULE OF LEASE PAYMENTS

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated for convenience as of June 1, 2023, is by and between the BRISBANE/GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT FINANCING AUTHORITY, a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California, as lessor (the "Authority"), and the CITY OF BRISBANE, CALIFORNIA, a municipal corporation and general law city organized and existing under and by virtue of the laws of the State of California, as lessee (the "City").

RECITALS:

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of June 1, 2023 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in San Mateo County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Site"), and certain existing facilities on the Site, more particularly described in Exhibit B attached hereto and made a part hereof (the "Facility" and, with the Site, the "Property"), all for the purpose of enabling the City to finance the costs of tenant improvements to, and related equipment and furnishings for, a building at 25 Park Place leased by the City (the "2023 Project");

WHEREAS, in order to provide the revenues necessary to enable the Authority to pay debt service on the Bonds (hereinafter defined) as it becomes due, the Authority proposes to lease the Property to the City pursuant to this Lease Agreement and to assign its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the City, to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), pursuant to that certain Indenture of Trust, dated as of June 1, 2023, by and between the Authority and the Trustee (the "Indenture"), and pursuant to which the Authority will issue and the Trustee will authenticate and deliver its Brisbane/Guadalupe Valley Municipal Improvement District Financing Authority Lease Revenue Bonds, Series 2023, in the aggregate principal amount of \$_____ (the "Bonds"); and

WHEREAS, the Authority and the City have duly authorized the execution and delivery of this Lease Agreement.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms used in this Lease Agreement have the respective meanings given them in Section 1.01 of the Indenture.

Section 1.2. Exhibits. The following exhibits are attached to, and by this reference made a part of, this Lease Agreement:

- EXHIBIT A: DESCRIPTION OF THE SITE
- EXHIBIT B: DESCRIPTION OF THE FACILITY
- EXHIBIT C: SCHEDULE OF LEASE PAYMENTS

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Authority. The Authority makes the following covenants, representations and warranties as the basis for its undertakings herein contained:

(a) *Organization/Authority*. The Authority is a joint exercise of powers entity duly organized and existing under the laws of the State and is duly authorized to issue the Bonds and to perform its obligations under the Site and Facility Lease and this Lease Agreement.

(b) *Enforceability*. All requirements have been met and procedures have occurred in order to authorize the execution and delivery by the Authority of the Site and Facility Lease, this Lease Agreement and the Indenture. The Authority has taken all necessary action and has complied with all provisions of the law required to make the Site and Facility Lease, this Lease Agreement and the Indenture valid and binding limited obligations of the Authority, except to the extent limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity, or by public policy.

(c) *Limited Obligation of the Authority*. The Bonds have been duly authorized, executed and delivered by the Authority. Nothing in the Site and Facility Lease, this Lease Agreement or the Indenture shall be construed as requiring the Authority to provide any financing for any purpose other than the financing of the 2023 Project.

(d) *No Litigation*. To the best knowledge of the Authority, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Authority that (i) affects or seeks to prohibit, restrain or enjoin the issuance, execution or delivery of the Bonds, the application of the proceeds of the Bonds, or the execution and delivery of the Site and Facility Lease, this Lease Agreement or the Indenture, or (ii) affects or questions the validity or enforceability of the Bonds or the Site and Facility Lease, this Lease Agreement and the Indenture.

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

(a) *Organization/Authority*. The City is a municipal corporation and general law city duly organized and in good standing under the laws of the State and has full legal right, power and authority to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby and by proper action has duly authorized the execution, delivery and performance by the City of the Site and Facility Lease and this Lease Agreement.

(b) *Execution/Delivery*. The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the City.

(c) *Enforceability.* The Site and Facility Lease and this Lease Agreement constitute the legal, valid and binding agreements of the City enforceable against the City by the Trustee in accordance with their respective terms for the benefit of the Owners, and any rights of the Authority and obligations of the City not so assigned to the Trustee constitute the legal, valid, and binding agreements of the City enforceable against the City by the Authority in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(d) *No Conflicts.* The execution and delivery of the Site and Facility Lease and this Lease Agreement, the consummation of the transactions on the part of the City herein and therein contemplated and the fulfillment of or compliance by the City with the terms and conditions hereof and thereof, 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, loan agreement, 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 lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City (other than as contemplated hereby and by the Site and Facility Lease), which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease and this Lease Agreement, or the financial condition, assets, properties or operations of the City.

(e) *No Other Consents.* No consent or approval of any trustee or holder of any indebtedness of the City or any guarantor of indebtedness of or other provider of credit or liquidity to the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery by the City of the Site and Facility Lease and this Lease Agreement, or the consummation of any transaction of the City herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the City, after reasonable investigation, threatened, against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by or the validity of the Site and Facility Lease and this Lease Agreement, or upon the financial condition, assets, properties or operations of the City.

(g) *Disclosures Accurate.* No official statement or other offering document in connection with the issuance of the Bonds, as of its date or as of the date hereof, contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) *Financial Condition.* All financial statements and information heretofore delivered to the Original Purchaser by City, including without limitation, information relating to the financial condition of City, fairly and accurately present the financial position thereof and have been prepared (except where specifically noted therein) in accordance with generally accepted accounting principles consistently applied. Since the date of such statements, there has been no material adverse change in the financial condition or results of operations of the City or the other subjects of such statements.

(i) *Title to Property.* The City has good and marketable title to the Property free and clear from all encumbrances other than Permitted Encumbrances.

(j) *No Defaults.* The City is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) (i) under the Site and Facility Lease and this Lease Agreement, or (ii) 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 could reasonably be expected to have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease or the Indenture, or the financial condition, assets, properties or operations of the City.

ARTICLE III

ISSUANCE OF BONDS; ACQUISITION AND CONSTRUCTION OF THE 2023 PROJECT

Section 3.1. The Bonds.

(a) The Authority has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of _____ dollars (\$_____). The Authority agrees that the proceeds of sale of the Bonds shall be paid to the Trustee on the Closing Date for deposit and application pursuant to the terms and conditions of the Indenture.

(b) The City hereby approves the Indenture, the assignment to the Trustee of the rights (but none of the obligations) of the Authority assigned or purported to be assigned thereunder, and the issuance of the Bonds by the Authority thereunder.

Section 3.2. Plans and Specifications for the 2023 Project. Before any payment is made for the 2023 Project or any component thereof from amounts on deposit in the Project Fund, the City shall have filed with the Authority detailed Plans and Specifications relating thereto. The City may from time to time file amendments to such Plans and Specifications with the Authority and may thereby change or modify the description of the 2023 Project or any component thereof.

Section 3.3. Acquisition and Construction of the 2023 Project. The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided, for the Acquisition and Construction of the 2023 Project in accordance with Plans and Specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City pursuant to all applicable requirements of law. Direct payment of the Project Costs shall be made from amounts on deposit in the Project Fund, pursuant to Section 3.03 of the Indenture. All contracts for, and all work relating to, the Acquisition and Construction of the 2023 Project shall be subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the Acquisition and Construction of the 2023 Project will be completed on or before June 1, 2025; *provided, however*, that the failure to complete the 2023 Project by the estimated Completion Date thereof shall not constitute an Event of Default hereunder or a grounds for termination hereof, nor shall such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Lease Payments allocable to the 2023 Project.

The City shall have the right from time to time in its sole discretion to amend the description of the 2023 Project to be financed and leased by the Authority hereunder.

Upon the completion of the Acquisition and Construction of the 2023 Project, the amounts, if any, on deposit in the Project Fund shall be transferred by the City to the Trustee for deposit in the Bond Fund and the City shall close the Project Fund.

Section 3.4. Grant of Easements. The City hereby grants to the Authority all necessary easements, rights of way and rights of access in and to all real property or interests therein now or hereafter acquired and owned by the City, as may be necessary or convenient to enable the Authority to acquire, construct and install the 2023 Project thereon or thereabouts.

The City covenants that it will execute, deliver and record any and all additional documents as may be required to be executed, delivered and recorded to establish such easements, rights of way and rights of access.

Section 3.5. Appointment of City as Agent of Authority. The Authority hereby appoints the City as its agent to carry out all phases of the Acquisition and Construction of the 2023 Project pursuant to and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the Acquisition and Construction of the 2023 Project. The Authority, or the City as agent of the Authority hereunder, shall enter into, administer and enforce all purchase orders or other contracts relating to the Acquisition and Construction of the 2023 Project. All contracts for, and all work relating to, the Acquisition and Construction of the 2023 Project shall be subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like project and property by joint powers authorities and by municipal corporations.

ARTICLE IV

LEASE OF PROPERTY; TERM OF THE LEASE AGREEMENT; LEASE PAYMENTS

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

Section 4.2. Term of Lease. This Lease Agreement shall take effect on the date hereof, and shall end on the earlier of May 1, 2052, or such earlier date on which the Bonds shall no longer be Outstanding under the Indenture. If, on May 1, 2043, the Indenture shall not be discharged by its terms or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of the Lease Agreement shall be extended until there has been deposited with the Trustee an amount sufficient to pay all obligations due under the Lease Agreement, but in no event shall the Term of the Lease Agreement extend beyond May 1, 2053.

Section 4.3. Lease Payments.

(a) *Obligation to Pay*. In consideration of the lease of the Property from the Authority hereunder and subject to the provisions of Section 6.2, the City agrees to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Property during each Fiscal Year, the Lease Payments (denominated into components of principal and interest) for the Property in the respective amounts specified in Exhibit C hereto, to be due and payable on the respective Lease Payment Dates specified in Exhibit C hereto. Any amount held in the Revenue Fund, the Interest Account or the Principal Account on any Lease Payment Date, derived from any source of funds of the City or the Authority, shall be credited towards the Lease Payment then due and payable. The Lease Payments coming due and payable in any Fiscal Year shall be for the use of the Property for such Fiscal Year.

The City's obligation to pay Lease Payments hereunder shall be absolute and unconditional subject only to abatement, in the event and to the extent that there is substantial interference with the use and occupancy of the property or any portion thereof, as provided in Section 6.2.

(b) *Rate on Overdue Payments*. In the event the City should fail to make any of the payments required in this Section 4.3, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest borne by any Outstanding Bond. Such interest, if received, shall be deposited in the Revenue Fund.

(c) *Fair Rental Value*. The Lease Payments and Additional Payments coming due and payable in each Fiscal Year shall constitute the total rental for the Property for each Fiscal Year and shall be paid by the City in each Fiscal Year for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of, the Property during each Fiscal Year. The Authority and the City hereby agree and determine that the total Lease Payments do not exceed the fair rental value of the Property. In making such determination, consideration has been given to the obligations of the parties under this Lease

Agreement, the value of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(d) *Source of Payments; Budget and Appropriation.* The Lease Payments shall be payable from any source of available funds of the City, subject to the provisions of Section 6.2. The City covenants to take such action as may be necessary to include all Lease Payments due hereunder in each of its budgets during the Term of the Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be 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 official to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City. During the Term of the Lease Agreement, the City shall furnish to the Authority and the Trustee, no later than ten days following the adoption of a budget for the current Fiscal Year, a certificate stating that the Lease Payments due in that Fiscal Year have been included in the budget approved by the City Council for such Fiscal Year.

(e) *Assignment.* The City understands and agrees that all Lease Payments have previously been assigned by the Authority to the Trustee in trust, pursuant to Section 5.01 of the Indenture, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay all of the Lease Payments to the Trustee at its Office.

(f) *Security Deposit.* Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments for the Property in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts, including but not limited to amounts on deposit in the Revenue Fund, is either (i) sufficient to pay such Lease Payments, including the principal and interest components thereof, and premium, if any, in accordance with the Lease Payment schedule set forth in Exhibit C, or (ii) invested in whole or in part in Defeasance Obligations in such amount as will, in the opinion of an Independent Accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due hereunder, as the City shall instruct at the time of said deposit. 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 Agreement.

Section 4.4. Prepayment Option. The Authority hereby grants an option to the City to prepay the principal component of the Lease Payments in full, or in part, without premium.

Said option may be exercised with respect to Lease Payments due on and after April 15, ____, in whole or in part on any date commencing April 15, ____. Said option shall be exercised by the City by giving written notice to the Authority and the Trustee of the exercise of such option at least thirty (30) days prior to said Lease Payment Date. Such option shall be exercised in the event of prepayment in full, by depositing with said notice cash in an amount, which, together with amounts then on deposit in the Insurance and Condemnation Fund and the Revenue Fund, will be sufficient to pay the aggregate unpaid Lease Payments on said Lease Payment Date as set forth in Exhibit C hereto, together with any Lease Payments then due but unpaid, or, in the event of prepayment in part, by depositing with said notice cash equal to the amount desired to be prepaid (the principal component of which shall be an amount divisible by \$5,000) together with any Lease Payments then due

but unpaid. In the event of prepayment in part, the partial prepayment shall be applied against Lease Payments in such manner and shall be applied to redeem Bonds as the City shall determine and if the City shall fail to make such determination, pro rata. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the City to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit C attached hereto taking into account said partial prepayment.

Section 4.5. Quiet Enjoyment. During the Term of the Lease Agreement, the Authority shall provide the City with quiet use and enjoyment of the Property, and the City shall, during such Term, peaceably and quietly have and hold and enjoy the Property without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease Agreement. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority shall have the right to inspect the Property as provided in Section 7.2.

Section 4.6. Title. If the City pays all of the Lease Payments and Additional Payments during the Term of the Lease Agreement as the same become due and payable, or if the City posts a security deposit for payment of the Lease Payments pursuant to Section 4.3(f), and if the City has paid in full all of the Additional Payments coming due and payable as of such date, and provided in any event that no Event of Default shall have occurred and be continuing, all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. The Authority 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 4.7. Additional Payments. In addition to the Lease Payments, the City shall pay when due the following Additional Payments:

(a) All taxes and assessments of any type or character charged to the Authority or to the Trustee affecting the amount available to the Authority or the Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the City shall have the right to protest any such taxes or assessments and to require the Authority or the Trustee, at the City's expense, to protest and contest any such taxes or assessments levied upon them and that the City shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Authority or the Trustee;

(b) All reasonable fees, charges and expenses of the Trustee for services rendered under the Indenture as and when the same become due and payable;

(c) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under the Site and Facility Lease, this Lease Agreement or the Indenture; and

(d) The reasonable fees and expenses of the Authority or any agent or attorney selected by the Authority to act on its behalf in connection with the Site and Facility Lease, this Lease Agreement or the Indenture or the Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation, investigation or other proceeding which may at any time be instituted involving the Site and Facility Lease, this Lease Agreement or the Indenture or the Bonds or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the City, its properties, assets or operations or otherwise in connection with the administration of the Site and Facility Lease, this Lease Agreement or the Indenture.

(e) Any amounts due and payable by the City as arbitrage rebate under section 148 of the Code with respect to the Bonds, pursuant to City's covenants and agreements with respect thereto in Section 6.08 of the Indenture and Section 5.10(c) hereof.

Such Additional Payments shall be billed to the City by the Authority or the Trustee from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Authority or the Trustee for one or more of the above items. After such a demand, amounts so billed shall be paid by the City within thirty (30) days after the date of invoice. Notwithstanding the foregoing, the Authority shall not be required to submit a bill to the City for any amounts due with respect to arbitrage rebate under Section 6.08 of the Indenture, the calculation and payment for which is the responsibility of the City.

ARTICLE V
MAINTENANCE, TAXES, INSURANCE AND OTHER
MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of the Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Property which may include, without limitation, janitor service, security, power, gas, phone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or lessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the City under the terms of this Lease Agreement.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Lease Agreement 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 Authority shall notify the City that, in the reasonable opinion of the Authority, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority.

Section 5.2. Modification of Property. The City shall, at its own expense, have the right to make additions, modifications and improvements to the Property. All additions, modifications and improvements to the Property shall thereafter comprise part of the Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Property or cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and the City shall file with the Trustee and the Authority a Written Certificate of the City stating that the Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section 5.2, shall be of a value which is not substantially less than the value of the Property immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City pursuant to this Section 5.2; provided that if any such lien is established and the City shall first notify or cause to be

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

Section 5.3. Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained throughout the Term of the Lease Agreement, a standard comprehensive general insurance policy or policies in protection of the Authority, the City, and their respective Board members, Council 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 Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 (subject to a deductible clause of not to exceed \$250,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and such liability insurance may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.7, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied by the City toward extinguishment or satisfaction of the liability with respect to which they are paid.

Section 5.4. Fire and Extended Coverage Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, insurance against loss or damage to the improvements constituting a part of the Property by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance, when required, 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 lesser of (a) one hundred percent (100%) of the replacement cost of all of the insured improvements, or (b) the aggregate principal amount of the outstanding Bonds. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided however, that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance shall be applied as provided in Section 6.1(a).

Section 5.5. Rental Interruption Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property 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 twenty-four (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 agency or other program providing pooled insurance; provided that such insurance may not be maintained in the form of self-insurance except for a time element deductible not to exceed sixty (60) days in duration. The proceeds of such insurance, if any, shall be paid to the Trustee and deposited in the Revenue Fund, and shall be credited towards the payment of the Lease Payments as the same become due and payable.

Section 5.6. Recordation Hereof; Title Insurance. On or before the Closing Date the City shall, at its expense, (a) cause the Site and Facility Lease and this Lease Agreement, or a memorandum hereof or thereof, in each case in form and substance approved by Bond Counsel, to be recorded in the office of the San Mateo County Recorder, and (b) obtain a CLTA policy of title insurance which insures the City's leasehold estate in the Property in an amount equal to the aggregate initial principal amount of the Bonds. All Net Proceeds received under said policy shall be deposited with the Trustee in the Redemption Fund and shall be deposited in the Insurance and Condemnation Fund.

Section 5.7. Net Proceeds of Insurance; Form of Policies. Each policy of insurance maintained pursuant to Sections 5.4, 5.5 and 5.6 shall name the Trustee as loss payee so as to provide that all proceeds thereunder shall be payable to the Trustee. All required insurance policies shall be provided by a commercial insurer in one of the two highest rating categories by a Nationally Recognized Statistical Rating Organization (without regard to designations of plus (+) or minus (-)). The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. All such policies shall provide that the Trustee shall be given thirty (30) days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency or amount of any insurance or self-insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The City shall cause to be delivered to the Trustee annually, no later than February 1 in each year, a certificate stating that all of the insurance policies required by this Lease Agreement are in full force and effect and identifying whether any such insurance is then maintained in the form of self-insurance.

In the event that any insurance maintained pursuant to Section 5.3 shall be provided in the form of self-insurance, the City shall file with the Trustee annually, within ninety (90) days following the close of each Fiscal Year, a statement of the City risk manager, insurance consultant or actuary identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. In the event that any such insurance shall be provided in the form of self-insurance by the City, the City shall not be obligated to make any payment with respect to any insured event except from such reserves. The results of such review shall be filed with the Trustee.

Section 5.8. Installation of 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 items of equipment or other personal property in or upon any portion of the Property. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee shall have any interest and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the City from purchasing or leasing items to be installed pursuant to this Section 5.8 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 shall attach to any part of the Property.

Section 5.9. Liens. Neither the City nor the Authority shall, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to any portion of the Property, other than the respective rights of the Trustee, the Authority and the City as provided herein and Permitted Encumbrances. Except as expressly provided in this Article V, the City and the Authority shall promptly, at their 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 shall reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.10. Tax Covenants.

(a) *Private Activity Bond Limitation*. The City shall assure that proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

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

(c) *Rebate Requirement*. The City shall take any and all actions necessary to assure compliance with section 148(f) of the 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 Bonds.

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

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

Section 5.11. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Lease Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not constitute an Event of Default hereunder; *provided, however*, that the Participating Underwriter or any Owner or Beneficial Owner (as defined in the Continuing Disclosure Certificate) of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section 5.11, including seeking mandate or specific performance by court order.

Section 5.12. Payment of Costs of Issuance and Direction of Investments. The City hereby agrees that, pursuant to Section 3.02 of the Indenture, it will direct the payment of Costs of Issuance and that, pursuant to Section 5.07 of the Indenture, it will direct the Investment of funds held by the Trustee, and acknowledges the matters set forth in Section 5.07 of the Indenture.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; ABATEMENT OF LEASE PAYMENTS

Section 6.1. Application of Net Proceeds.

(a) *From Insurance Award.* The Net Proceeds of any insurance award resulting from any damage to or destruction of the Property by fire or other casualty shall be paid by the City to the Trustee and shall be deposited in the Insurance and Condemnation Fund by the Trustee and applied as set forth in Section 5.06 of the Indenture.

(b) *From Eminent Domain Award.* If the Property or any portion thereof shall be taken permanently or temporarily under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Net Proceeds resulting therefrom shall be deposited in the Insurance and Condemnation Fund and applied as set forth in Section 5.06 of the Indenture.

(c) *From Title Insurance Award.* The Net Proceeds of any title insurance award shall be paid to the Trustee, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 5.06 of the Indenture.

Section 6.2. Abatement of Lease Payments.

(a) *Abatement Due to Damage or Destruction of the Property.* The Lease Payments shall be abated during any period in which by reason of damage to or destruction of the Property (other than by eminent domain which is hereinafter provided for) there is substantial interference with the use and occupancy by the City of the Property or any portion thereof. The amount of such abatement shall be an amount agreed upon by the City and the Authority such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portions of the Property not damaged or destroyed and available for use and possession by the City. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction or the date when the remaining portion of the Property is available for use and possession by the City. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage or destruction. There shall be no abatement of the Lease Payments to the extent that moneys derived from any person as a result of such damage or destruction are available to pay the amount which would otherwise be abated or if there is any money available in the Revenue Fund to pay the amount which would otherwise be abated.

(b) *Abatement Due to Eminent Domain.* If all of the Property shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of the Lease Agreement shall cease with respect to the Property as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (i) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (ii) there shall be a partial abatement of Lease Payments in an amount to be agreed upon by the City and the Authority such that the resulting Lease

Payments for the Property represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

ARTICLE VII

DISCLAIMER OF WARRANTIES; ACCESS

Section 7.1. Disclaimer of Warranties. THE AUTHORITY MAKES NO 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 PROPERTY, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE AUTHORITY AND ITS ASSIGNS BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SITE AND FACILITY LEASE, THIS LEASE AGREEMENT OR THE INDENTURE FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROPERTY.

Section 7.2. Rights of Access. The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Property. The City further agrees that the Authority, any Authorized Representative of the Authority, and the Authority's successors or assigns, shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the City to perform its obligations hereunder; provided, however, that the Authority's assigns shall not be required to cause such proper maintenance.

Section 7.3. Non-Liability of the Authority. The Authority shall not be obligated to pay the principal of or interest on the Bonds, except from Revenues and other moneys and assets received by the Trustee pursuant to this Lease Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Authority or any member of the Authority is pledged to the payment of the principal or interest on the Bonds. Neither the Authority nor its members, Board members, officers, agents or employees or their successors and assigns shall be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under, by reason of or in connection with this Lease Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the City under this Lease Agreement.

The City hereby acknowledges that the Authority's sole source of moneys to repay the Bonds will be payments made by the City to the Trustee pursuant to this Lease Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the City shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the City, the Authority or any third party, subject to any right of reimbursement from the Authority or any such third party, as the case may be, therefor but solely, in the case of the Authority, from the Revenues.

Section 7.4. Expenses. The City shall pay and indemnify the Authority and the Trustee against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Trustee, without negligence or willful misconduct) and arising out of or in connection with the Site and Facility Lease, this Lease Agreement, the Indenture and the Bonds. These obligations and those in Section 7.5 shall remain valid and in effect notwithstanding payment of the Lease Payments or the Bonds or termination of this Lease Agreement or the Indenture.

Section 7.5. Indemnification.

(a) To the fullest extent permitted by law, the City agrees to indemnify, hold harmless and defend the Authority, the Trustee, and each of their respective past, present and future officers, members, Board members, officials, officers, directors, employees, attorneys and agents (collectively, the "Indemnified Parties"), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Bonds, the Indenture, the Site and Facility Lease or this Lease Agreement, or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bonds;

(ii) any act or omission of the City or any of its agents, contractors, servants, employees, tenants) or licensees in connection with the Property, the operation of the Property, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Property or any part thereof;

(iii) any lien or charge upon payments by the City to the Authority and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Authority or the Trustee in respect of any portion of the Property;

(iv) any violation of any environmental laws or regulations with respect to, or the release of any hazardous substances from, the Property or any part thereof;

(v) the defeasance and/or redemption, in whole or in part, of the Bonds;

(vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made

therein, in the light of the circumstances under which they were made, not misleading; or

(vii) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (A) in the case of the foregoing indemnification of the Trustee or any of its respective officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the negligence or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Authority or any of its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the City, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the City shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the City if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section 7.5 shall survive the termination of this Lease Agreement.

Section 7.6. Waiver of Personal Liability. No member, Board member, officer, agent or employee of the Authority or any officer, agent or employee of the City shall be individually or personally liable for the payment of any principal of or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Lease Agreement, but nothing herein contained shall relieve any such member, Board member, officer, agent or employee from the performance of any official duty provided by law or by this Lease Agreement.

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

Section 8.1. Assignment by the Authority. Certain rights of the Authority under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the City under this Lease Agreement, have been pledged and assigned to the Trustee for the benefit of the Owners of the Bonds pursuant to the Indenture, to which pledge and assignment the City hereby consents. The assignment of this Agreement to the Trustee is solely in its capacity as Trustee under the Indenture and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article VIII thereof.

Section 8.2. Assignment and Subleasing by the City. This Lease Agreement may not be assigned by the City. The City may sublease the Property or any portion thereof, subject to, and delivery to the Authority and the Trustee of a certificate as to, all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;

(b) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease (which the Trustee has no duty or obligation to review or examine and in no event shall be responsible for the contents of such sublease);

(c) No such sublease by the City shall cause the Property to be used for a purpose other than as may be authorized under any applicable provisions of the laws of the State; and

(d) The City shall furnish the Authority and the Trustee with a written opinion of Bond Counsel, stating that such sublease is permitted by this Lease Agreement.

Section 8.3. Amendment of Lease.

(a) *Substitution of Site*. The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute other land (a "Substitute Site") for the Site (the "Former Site"), or a portion thereof, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(i) The City shall file with the Authority and the Trustee an amended Exhibit A to the Site and Facility Lease which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(ii) The City shall file with the Authority and the Trustee an amended Exhibit A to this Lease Agreement which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(iii) The City shall certify in writing to the Authority and the Trustee that such Substitute Site serves the purposes of the City, constitutes property that is unencumbered (or the portion of such property to be substituted is unencumbered), subject to Permitted Encumbrances, and constitutes property which the City is permitted to lease under the laws of the State;

(iv) The City delivers to the Trustee and the Authority evidence (which may be an officer's certificate of the City) that the Substitute Site (or the portions to be substituted) is of equal or greater value than the Site (or the portions thereof) to be substituted;

(v) The City shall certify the Substitute Site shall not cause the City to violate any of its covenants, representations and warranties made herein;

(vi) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which adds thereto a description of the Substitute Site and deletes therefrom the description of the Former Site;

(vii) The City shall certify that the Substitute Site is of the same or greater essentiality to the City as was the Former Site;

(viii) The City shall certify that the Substitute Site has a useful life equal to or longer than the remaining term of the Bonds; and

(ix) The City shall provide notice of such substitution to any rating agency then rating the Bonds.

(b) *Substitution of Facility.* The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute a substitute facility or substitute facilities (a "Substitute Facility") for the Facility (the "Former Facility"), or a portion thereof, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(i) The City shall file with the Authority and the Trustee an amended Exhibit B to the Site and Facility Lease which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility, if applicable;

(ii) The City shall file with the Authority and the Trustee an amended Exhibit B to this Lease Agreement which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(iii) The City shall certify in writing to the Authority and the Trustee that such Substitute Facility serves the purposes of the City, constitutes property that is unencumbered (or the portion of such property to be substituted is unencumbered), subject to Permitted Encumbrances, and constitutes property which the City is permitted to lease under the laws of the State;

(iv) The City delivers to the Trustee and the Authority evidence (which may be an officer's certificate of the City) that the Substitute Facility (or the portions to be substituted) is of equal or greater value than the property (or the portions thereof) to be substituted;

(v) The City shall certify the Substitute Facility shall not cause the City to violate any of its covenants, representations and warranties made herein;

(vi) The City shall certify that the Substitute Facility is of the same or greater essentiality to the City as was the Former Facility;

(vii) The City shall certify that the Substitute Facility has a useful life equal to or longer than the remaining term of the Bonds; and

(viii) The City shall provide notice of such substitution to any rating agency then rating the Bonds.

(c) *Release of Site.* The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to release any portion of the Site, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such release:

(i) The City shall file with the Authority and the Trustee an amended Exhibit A to the Site and Facility Lease which describes the Site, as revised by such release;

(ii) The City shall file with the Authority and the Trustee an amended Exhibit A to this Lease Agreement which describes the Site, as revised by such release;

(iii) The City delivers to the Trustee and the Authority evidence (which may be an officer's certificate of the City) that the Site, as revised by such release, including the value of the Facility (other than any portion thereof, or the Site or any portion thereof to be released), has a value at least equal to the principal amount of the Bonds then outstanding;

(iv) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which describes the Site, as revised by such release; and

(v) The City shall provide notice of such release to any rating agency then rating the Bonds.

(d) *Release of Facility.* The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to release any portion of the Facility provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such release:

(i) The City shall file with the Authority and the Trustee an amended Exhibit B to the Site and Facility Lease which describes the Facility, as revised by such release;

(ii) The City shall file with the Authority and the Trustee an amended Exhibit B to this Lease Agreement which describes the Facility, as revised by such release;

(iii) The City delivers to the Trustee and the Authority evidence (which may be an officer's certificate of the City) that the Facility, as revised by such release,

together with the Site (that remains subject to this Lease Agreement), has a total value at least equal to the principal amount of the Bonds then outstanding; and

(iv) The City shall provide notice of such release to any rating agency then rating the Bonds.

(e) *Generally.* The Authority and the City may at any time amend or modify any of the provisions of this Lease Agreement, subject to Section 6.09 of the Indenture, but only (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds, or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City contained in this Lease Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

(ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments will not materially adversely affect the interests of the Owners of the Bonds; or

(iii) to amend any provision thereof relating to the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of the Owners of the Bonds of interest on the Bonds under the Code, in the opinion of Bond Counsel.

ARTICLE IX

EVENTS OF DEFAULT; REMEDIES

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Lease Agreement:

(a) Failure by the City to pay any Lease Payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to make any Additional Payment required hereunder and the continuation of such failure for a period of thirty (30) days after notice thereof is given to the City by the Trustee.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; provided, however, that if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if the City shall commence to cure such failure within such sixty (60) day period and thereafter diligently and in good faith shall cure such failure in a reasonable period of time which shall last no longer than 120 days after the original written notice.

(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 applicable federal bankruptcy law, or under any similar acts which may hereafter be enacted.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; provided, however, that notwithstanding anything to the contrary herein or in the Indenture, 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 or to terminate this Lease Agreement or to cause the fee interest of the City in the Property to be sold, assigned or otherwise alienated. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and, upon the breach thereof, the Authority may exercise any and all rights of entry and re-entry upon the Property. The City hereby irrevocably consents to the Authority's repossession of the Property if such an Event of Default shall occur and consents to the Authority's re-letting of the Property for the account of the City. In the event of such default and notwithstanding any re-entry by the Authority, the City shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Lease Agreement and the performance of all conditions herein contained and, in any event,

such rent and/or damages shall be payable to the Authority at the time and in the manner as herein provided, to wit:

(a) The City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Property, or, in the event the Authority is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of the Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Authority.

(b) The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Property in the event of default by the City in the performance of any covenants herein contained to be performed by the City and to remove all personal property whatsoever situated upon the Property to place such property in storage or other suitable place in San Mateo County, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained.

(c) The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the City that may be in or upon the Property.

(d) The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise.

Section 9.3. Limitation on Remedies. Notwithstanding the foregoing provisions of Section 9.2, neither the Authority nor the Trustee shall exercise any remedies against the Property to the extent such remedies would generate funds which are not available to satisfy the obligations of this Lease Agreement or the Indenture.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall, except as herein expressly provided to the contrary, be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any 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 Authority to exercise any remedy reserved to it in this Article IX it shall

not be necessary to give any notice, other than such notice as may be required in this Article IX or by law.

Section 9.5. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease Agreement should default under any of the provisions hereof and the non-defaulting party should employ attorneys 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 non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

Section 9.6. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.7. Trustee and Bond Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article IX have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies may be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture. The Trustee shall be considered a third-party beneficiary of this Lease Agreement for enforcing its rights under this Lease Agreement.

ARTICLE X
MISCELLANEOUS

Section 10.1. Notices. All written notices to be given under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by phone, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt.

To the Authority: Brisbane/Guadalupe Valley Municipal
Improvement District Financing Authority
c/o City of Brisbane
50 Park Place
Brisbane, CA 94005
Attention: Executive Director

If to the City: City of Brisbane
50 Park Place
Brisbane, CA 94005
Attention: City manager

If to the Trustee: The Bank of New York Mellon Trust Company, N.A.
333 South Hope Street, Suite 2525
Los Angeles, CA 90071
Attention: Corporate Trust Department

The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

Section 10.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.

Section 10.3. Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.4. Net-net-net Lease. This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 10.5. Further Assurances and Corrective Instruments. The Authority 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 Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 10.6. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.7. Governing Law. This Lease Agreement is a contract made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State.

Section 10.8. Authorized Representatives. Whenever under the provisions of this Lease Agreement the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authorized Representative of the Authority and for the City by an Authorized Representative of the City, and any party hereto shall be authorized to rely upon any such approval or request.

Section 10.9. Waiver of Personal Liability. All liabilities under this Lease Agreement on the part of the City are solely liabilities of the City and the Authority hereby releases each and every Council member, director, officer, employee and agent of the City of and from any personal or individual liability under this Lease Agreement. No Council member, director, officer, employee or agent of the City shall at any time or under any circumstances be individually or personally liable under this Lease Agreement for anything done or omitted to be done by the City hereunder.

Section 10.10. Limitation of Rights to Parties and Bond Owners. Nothing in this Lease Agreement expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds any legal or equitable right, remedy or claim under or in respect of this Lease Agreement or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

Section 10.11. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

IN WITNESS WHEREOF, the Authority has caused this Lease Agreement to be executed in its name by its duly Authorized Representative; and the City has caused this Lease Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

BRISBANE/GUADALUPE VALLEY
MUNICIPAL IMPROVEMENT
DISTRICT FINANCING AUTHORITY

By _____
Clayton L. Holstine
Executive Director

CITY OF BRISBANE

By _____
Clayton L. Holstine
City Manager

EXHIBIT A

DESCRIPTION OF THE SITE

The land referred to herein is situated in the State of California, County of San Mateo, City of Brisbane, and described as follows:

Site of Mission Blue Community Center, 475 Mission Blue Drive, Brisbane, CA

Lot 71, Northeast Ridge Unit No. 1, filed May 30, 1995, Map Book 125, Pages 28 through 62, inclusive, San Mateo County Records.

APN: 005-440-020 and 005-440-010

Site of Municipal Pool, 2 Solano Street, Brisbane, CA

Portion of lands of Brisbane Elementary School District as Granted by Crocker Estate Company and by Deed as recorded May 23, 1951 in Volume 2077, Page 430 of Deeds, Records of San Mateo County, California and lying within the County of San Mateo, description as follows:

Parcel A:

Point of beginning which marks the intersection of the Northerly line of San Francisco Avenue with the Westerly line of Solano Street as designated on that certain Map entitled "Amended Map of Subdivision Number 1, 2, 3 of City of Visitacion, (Brisbane) California", which was filed for Record on October 14, 1908 in the Office of the Recorder of San Mateo County, State of California in Book 6 of Maps at Page 45, commencing at said point of intersection along the Northerly boundary line of the above mentioned subdivision South 89° 35' 50" West 496.68 feet; thence leaving said boundary North 50° 38' 00" East 314.30 feet; thence North 39° 16' 00" West 48.06 feet; thence North 41° 00' 00" East 7.09 feet; thence South 70° 45' 00" East 26.84 feet; thence South 62° 15' 00" East 175.00 feet; thence South 03° 56' 46" West 29.62 feet; thence South 64° 20' 30" East 53.95 feet, to a tangent curve concave to the Southwest having a central angle of 57° 04' 14" and a radius 100 feet; thence along the arc of said curve an arc distance of 99.61 feet; thence non-tangent from said curve South 10° 25' 40" West more or less to the point of beginning.

Containing 1.44 acres more or less.

Parcel A-1:

A right of way for ingress and egress purposes over a strip of land lying Northerly and adjacent to the above described Parcel A as follows:

Point of beginning being at the intersections of the Northerly line of San Francisco Avenue with the Westerly line of Solano Street; thence North 10° 25' 40" East 17.99 feet to a non-tangent curve concave to the Southwest having a central angle of 57° 04' 14" and a radius 100 feet a radial to said point bears North 82° 43' 44" East; thence along the arc of said curve an arc distance of 99.81 feet; thence tangent from said curve North 64° 20' 30" West 53.95 feet; thence North 03° 56' 46" East 29.62 feet; thence North 62° 15' 00" West 175.00 feet; thence North 70° 45' 00" West 26.84 feet; thence North 15° 15' 00" East 25.00 feet; thence South 70° 45' 00" East 28.70 feet; thence South 62° 15' 00" East 243.03 feet; thence to a tangent curve concave to the Southwest having a central angle of 61° 50' 50" and a radius of 150 feet; thence along the arc of said curve an arc distance of 161.92 feet; thence tangent from said curve South 00° 24' 10" East 7.34 feet; thence South 89° 35' 50" West 51.81 feet more or less to the point of beginning.

Containing 0.35 acres, more or less.

APN: 005-166-020

Parcel B

All that certain real property situate in the City of Brisbane, County of San Mateo, State of California being a portion of that certain real property described in that certain Grant Deed from Crocker Estate Company to Brisbane Elementary School District recorded in Volume 2077 at page 430, San Mateo County Official Records and being more particularly described as follows:

Beginning at the Southeasterly corner of said Lands of the Brisbane Elementary School District:

Thence along the Easterly boundary of said Lands of Brisbane Elementary School District, being the Southerly boundary of Parcel 'A' as said Parcel is shown on the certain Parcel Map recorded on June 13, 1978 in Book 42 of Parcel Maps at Pages 44 and 45, San Mateo County Records North 00°50'48" East a distance of 156.81 feet (said Grant Deed indicates North 0°24'13" West 156.89 feet);

Thence along the Northerly line of said Lands of Brisbane Elementary School District being the Southerly line of said Parcel 'A' North 63°12'12" West a distance of 351.73 feet (said Grant Deed indicates North 64°27'10" West);

Thence leaving said Northerly line of the Lands of Brisbane Elementary School District in a Southwesterly direction South 28°59'58" West a distance of 94.65 feet;

Thence South 51°52' 58 West a distance of 361.41 feet to the Southerly line of said Lands of Brisbane Elementary School District:

Thence along said Southerly line of the Lands of Brisbane Elementary School District South 89° 09'12" East a distance of 94.48 feet (said Grant Deed indicates South 89° 35' 50" West) to the Southwesterly corner of the Lands of the City of Brisbane as said lands are described in that certain Grant Deed from the Brisbane School District to the City of Brisbane recorded in Reel 7713 Page 825 and 826, San Mateo County Records;

Thence along the Westerly line of said Lands of the City of Brisbane North 51°52' 58° East a distance of 314.30 feet (aforementioned Grant Deed indicates North 50°38' 00" East);

Thence North 38°01' 02" West a distance of 48.06 feet (aforementioned Grant Deed indicates North 39° 16' 00" West);

Thence North 42°14' 58" East a distance of 7.09 feet (aforementioned Grant Deed indicates North 41°00' 00" East);

Thence South 69° 30' 02" East a distance of 26.84 feet (aforementioned Grant Deed indicates South 70°45' 00" East);

Thence South 61°00' 02" East a distance of 175.00 feet (aforementioned Grant Deed indicates South 62°15' 00" East);

Thence South 5° 11' 44" West a distance of 29.62 feet (aforementioned Grant Deed indicates South 3° 56' 46" West);

Thence South 63° 05' 32" East a distance of 53.95 feet (aforementioned Grant Deed indicates South 64° 20' 30" East);

Thence along a tangent curve concave to the Southwest having a radius of 100.00 feet and a central angle of 57° 04' 14", an arc length of 99.61 feet;

Thence South 11° 39' 26" West a distance of 17.99 feet (aforementioned Grant Deed indicates South 10° 25' 40" West) to a point which marks the intersection of the Northerly line of San Francisco Avenue with the Westerly line of Solano Street as designated on that certain Map entitled "Amended Map of subdivision

Number 1, 2, 3 of City of Visitacion, (Brisbane) California, which was filed for Record on October 14, 1908 in Book 6 of Maps at page 45, San Mateo County Records;

Thence along the Northerly line of said San Francisco Avenue South 89° 09'12" East a distance of 50.77 feet to the point of beginning.

Containing 1.264 Acres, more or less.

APN: 005-166-040

Site of Old Community Center, 250 Visitacion Avenue, Brisbane, CA

Lots 3 and 4, Block 13, as designated on the map entitled "Amended Map of Subdivisions Nos. 1, 2 and 3, of City of Visitacion, California", which map was filed in the Office of the Recorder of the County of San Mateo, State of California on October 14, 1908 in Book 6 of Maps at Page 45.

APN: 007-272-020

EXHIBIT B

DESCRIPTION OF THE FACILITY

The Facility consists of

Mission Blue Community Center, 475 Mission Blue Drive, Brisbane, CA. Built in 2000, this 6,000 square foot facility has seating for up to 200 dining guests is located in the Northeast Ridge district and offers panoramic views of San Bruno Mountain and the San Francisco Bay and is available for event rentals.

Municipal Pool, 2 Solano Street, Brisbane, CA. Built in 2000 in part by funds from the Northeast Ridge Development, the pool is a 75-foot length outdoor pool (total 4,200 sq. ft.) with a zero-depth entry pool for disability access, using solar and conventional heating. The pool is surrounded by landscaping and sheltered stations which can be rented for gatherings.

Old Community Center, 250 Visitacion Avenue, Brisbane, CA. Built in 1979, this two-story facility is located in Downtown Brisbane with a total size of approximately 5,500 square feet. The top floor is approximately 2,000 square feet and can be rented out for events, seating up to 70 guests.

EXHIBIT C

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Lease Payment</u>
10/15/23			
4/15/24			
10/15/24			
4/15/25			
10/15/25			
4/15/26			
10/15/26			
4/15/27			
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4/15/43			