

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO					CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): City Attorney			DATE: 11/18/2016	
SUBJECT: Public Facilities Financing Authority of the City of San Diego Approval of Issuance of Authority's Lease Revenue Bonds (Balboa Park Parking and Related Public Improvements) and Approving Certain Documents in Connection Therewith.						
PRIMARY CONTACT (NAME, PHONE): Brant Will, 236-6220, MS 59				SECONDARY CONTACT (NAME, PHONE): ,		
COMPLETE FOR ACCOUNTING PURPOSES						
FUND						
FUNCTIONAL AREA						
COST CENTER						
GENERAL LEDGER ACCT						
WBS OR INTERNAL ORDER						
CAPITAL PROJECT No.						
AMOUNT	0.00	0.00	0.00	0.00	0.00	0.00
FUND						
FUNCTIONAL AREA						
COST CENTER						
GENERAL LEDGER ACCT						
WBS OR INTERNAL ORDER						
CAPITAL PROJECT No.						
AMOUNT	0.00	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): NA						
ROUTING AND APPROVALS						
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY		APPROVAL SIGNATURE		DATE SIGNED
		ORIG DEPT.		Gleeson Townsley, Carrie		11/18/2016
		CFO				
		COO				
		CITY ATTORNEY				
		COUNCIL PRESIDENTS OFFICE		Jurado-Sainz, Diana		11/18/2016

PREPARATION OF:	<input checked="" type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)
A resolution of the Public Facilities Financing Authority of the City of San Diego authorizing the issuance of its Lease Revenue Bonds (Balboa Park Parking and Related Facilities)(Bonds) in a principal amount not to exceed \$50,000,000, authorizing the form and content of all related legal documents and approving all actions heretofore taken in connection with the issuance, delivery and sale of the Bonds.				
STAFF RECOMMENDATIONS: Approve the resolution.				
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)				
COUNCIL DISTRICT(S):	Council District 3			
COMMUNITY AREA(S):				
ENVIRONMENTAL IMPACT:				
CITY CLERK INSTRUCTIONS:	Please docket as companion item to City Council action on the second reading of Ordinance O-2017-74 for December 6, 2016 PFFA meeting.			

**COUNCIL ACTION  
EXECUTIVE SUMMARY SHEET  
CITY OF SAN DIEGO**

DATE: 11/18/2016

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Public Facilities Financing Authority of the City of San Diego Approval of Issuance of Authority's Lease Revenue Bonds (Balboa Park Parking and Related Public Improvements) and Approving Certain Documents in Connection Therewith.

COUNCIL DISTRICT(S): Council District 3

CONTACT/PHONE NUMBER: Brant Will/236-6220, MS 59

**REQUESTED ACTION:**

Approve a resolution authorizing the issuance of the Authority's Lease Revenue Bonds (Balboa Park Parking and Related Public Improvements) and approving certain legal documents in connection therewith.

**STAFF RECOMMENDATION:**

Approve the resolution.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

The City Council of the City of San Diego has requested the assistance of the Authority in issuing the Authority's Lease Revenue Bonds (Balboa Park Parking and Related Facilities)(Bonds), in order to finance the cost of the construction of a parking facility in Balboa Park and accompanying rooftop park. The leased asset for the transaction will be the parking facility. Please refer to Report to Council No. 16-087, dated October 21, 2016, for additional information on this item.

The Bonds will only be issued after a Preliminary Official Statement is approved by the City Council and the Authority, which is expected to occur in the fall of 2017.

**FISCAL CONSIDERATIONS:**

NA

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):**

**PREVIOUS COUNCIL and/or COMMITTEE ACTION** (describe any changes made to the item from what was presented at committee):

See City Council companion item.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Gleeson Townsley, Carrie

Originating Department



THE CITY OF SAN DIEGO

## Report to the City Council

DATE ISSUED: October 21, 2016 REPORT NO. 16-087

ATTENTION: Council President and City Council

SUBJECT: Public Facilities Financing Authority of City of San Diego Lease Revenue Bonds, Series 2017 (Balboa Park Parking Related Public Improvements)

REFERENCE: Report No. 16-089: Balboa Park Plaza de Panama Project, dated October 21, 2016

### REQUESTED ACTION:

1. Authorize the issuance of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2017 (Balboa Park Parking Related Public Improvements) (the "Bonds") in a principal amount not to exceed \$50 million and the execution of related financing documents, including the forms of the Site Lease, Facilities Lease, Indenture, Bond Purchase Agreement and Continuing Disclosure Certificate in order to provide funds to support the construction of a parking garage in Balboa Park (the "Parking Garage"), and related capital improvements (together, the "Project");
2. Authorize the issuance of the Bonds, in accordance with Section 147(f) of the Internal Revenue Code, for the purpose of financing the Project, which may benefit certain 501(c)(3) organizations;
3. Authorize the Chief Financial Officer to establish one or more special interest-bearing accounts for the proceeds of the Bonds;
4. Authorize the Chief Financial Officer to establish one or more funds to deposit parking related revenues, pay Parking Garage and other related operating and maintenance expenses, pay annual debt service, and maintain a safety fund and capital reserves at target levels;
5. Authorize the City Attorney, or his designee, to amend the Agreement for Services between the City of San Diego and Stradling, Yocca, Carlson & Rauth as Bond and Disclosure counsel for the Bonds to extend the term of the Agreement and increase the fees to be paid by \$32,500 above the amounts approved in Resolution R-307558 for a total not-to-exceed amount of \$95,000; and
6. Authorize an amendment to the Agreement for Services between the City of San Diego and Fieldman, Rolapp & Associates, as Financial Advisor, to extend the term through December 31, 2018.

### STAFF RECOMMENDATION:

Approve the requested actions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

**I. Background**

On September 19, 2016, City Council established the Balboa Park Plaza de Panama as a Capital Improvement Project (Balboa Park Community Area District 3) thereby reinitiating the Balboa Park Plaza de Panama Project. Listed among the improvements in the Balboa Park Plaza de Panama Project, is the 797 space Parking Garage with a 2.2 acre rooftop park, a bypass bridge, and road to divert vehicular traffic away from the pedestrian core of the park.

Subject to City Council approval of the Plaza de Panama Cooperation Agreement between the Plaza de Panama Committee and the City, the City's financial contribution towards the Balboa Park Plaza de Panama Project will be \$4.9 million. Of this identified City contribution amount, a significant portion is proposed to be generated through the implementation of a tax-exempt bond financing leveraging paid parking revenues generated from the Parking Garage. Based on net-parking revenue projections and the financing plan discussed below, it is estimated that approximately \$3.9 million in project proceeds could be generated from the proposed bond issuance. The expected remaining balance of approximately \$1.0 million would be funded from City funds available for major capital projects, of which \$1 million was previously authorized by the City Council on September 19, 2016 (Resolution R-310691) for the purpose of reviewing and finalizing project design.

**II. Discussion**

Parking Revenue and Expense Projections

To ascertain projected parking revenues, the City engaged Parking Concepts, Inc. ("PCI"), the primary parking consultant selected to develop the 2012 projections, to prepare Parking Garage fee model projections (Attachment 1). PCI has significant experience leasing, operating, and managing parking facilities across California, and providing consultant services on parking facility revenue, expenses, operations, and maintenance for various private and public entities.

Based on the proposed fee model and updated projections for the 797 space Parking Garage, which are discussed in detail below and summarized in Table 1, PCI estimates potential gross parking revenues, including general visitor parking, monthly parking passes, and valet parking, to total approximately \$4.0 million beginning in year 1, with fees assumed to increase 6.66% every third year (or 20% over the 10 year proforma period). In addition, PCI projects gross annual operating expenses for the Parking Garage to be approximately \$683,000 in year 1, with expenses generally assumed to increase 2% annually, resulting in approximately \$3.3 million in annual net operating revenue from the Parking Garage in year 1 available to make annual bond payments. Over the 10 year proforma period, net operating revenue is projected to range between \$3.3 million and \$4.0 million.

General Visitor Parking

The general visitor parking rate structure is proposed as follows:

<b><u>Parking Duration</u></b>	<b><u>Weekdays</u></b>	<b><u>Weekends/Holidays/Peak Days</u></b>
Up to One Hour	\$2.00	\$3.00
Between One and Two Hours	\$4.00	\$6.00
Over Two Hours (Daily Maximum)	\$8.00	\$12.00

The proposed rates are tiered to offer lower parking rates to visitors who plan to spend less than two hours at the park. On weekdays, this amounts to \$2.00 and \$4.00 for patrons parking for one hour and two hours, respectively, and \$8.00 for those visitors parking for any amount of time longer than two hours in a given day. On weekends and City holidays, the hourly rate during the first two hours is \$3.00, which amounts to \$3.00 for one hour and \$6.00 for two hours, with a daily maximum of \$12.00. In addition, if any weekdays are deemed to be “Peak” days due to expected elevated park attendance during pre-planned events including private events in the park, there is a potential to charge weekend/holiday pricing up to \$12.00. The projections provided in the report however only assumed revenue from the weekends and holidays.

Based on the assumed rate structure above, PCI projects revenue from general visitor parking to be approximately \$3.8 million annually beginning year 1. This projection incorporates the following key factors and assumptions: (1) current parking space inventory/supply in Balboa Park; (2) parking lot occupancy/demand surveys conducted in August/September 2016 by Park and Recreation staff; and (3) three paid tickets per space per day. Based on the factors above, PCI assumes projected general visitor occupancy to range between 36-50% on weekdays and 49-61% on weekends and holidays.

#### **Monthly Parking**

A monthly parking rate is proposed at a rate \$125 per month with 30 spaces reserved for staff and board members of the various 501(c)3 institutions within Balboa Park who would want the certainty of a parking spot in the Parking Garage. This rate reflects a modest discount compared to the proposed daily parking rates assuming 20 days of use at the \$8 maximum daily rate during weekdays, which would total \$160 per month. Based on the \$125 proposed monthly rate for 30 spaces, PCI projects parking revenue related to monthly parking to be \$45,000 annually beginning year 1.

#### **Valet Parking**

The monthly valet parking rate proposed to be charged to a valet parking operator is \$150/month per space, with 80 spaces set aside full-time for this purpose. In addition, 50 additional part-time spaces would be available on weekends at a rate of \$6.00/weekend day per space. The new valet parking operator is expected to be identified through the City’s procurement process, potentially together with the solicitation for the general Parking Garage Operator.

Currently, LAZ Parking (formerly Sunset Parking) operates a valet concession in the Plaza de Panama. Under current operations, LAZ Parking uses nearby parking lots, including the Organ Pavilion, Federal and Inspiration Point parking lots, to park valet cars in free, unreserved parking spaces that would otherwise be used by general visitors. By incorporating and moving valet parking into the Parking Garage, those spaces that were previously occupied by valet cars would be freed up for general self-parking use outside of the Parking Garage. In addition, the valet parking operator will gain reserved valet parking spaces, thereby increasing valet efficiency for the valet parking operator and valet users and

provide a guaranteed income stream for the Parking Garage operations. Based on the \$150 proposed monthly valet rate, and the additional \$6.00/day per space (up to 50 spaces) weekend rate, PCI projects valet parking revenue to be \$175,200 annually beginning year 1.

#### Projected Expenses

PCI projections for Parking Garage operating expenses are based on industry standards and cost indications provided by parking garage operators. The Parking Garage is proposed to operate on an automated basis, with seven full time equivalent (FTE) customer service staff members (including one manager and one supervisor) available to assist parking patrons in using the pay machines. Furthermore, PCI has assumed one FTE and one part-time equivalent (PTE) for parking enforcement.

In addition to payroll related expenses, other major expense categories include Repair and Maintenance, Administrative Expenses, and Other Operating Expenses. Included within the Other Operating Expenses category is the funding of a Capital Reserve Fund to cover the cost of capital improvements that the Parking Garage may need over its lifetime in order to maintain sound operational status. Based on input from PCI, who reviewed industry standards, the Capital Reserve Fund, which will be held by the City, will receive deposits annually at a rate of \$55 per parking space, or approximately \$44,000 per year, from Parking Garage revenue. The cumulative total, including assumed 2% annual growth, over the first 10 years is approximately \$480,000. Combined, total Parking Garage operating expenses are projected by PCI to be at least \$682,530 beginning in year 1, as discussed above.

<b>Table 1 - Parking Revenue and Expense Projections (Year 1)</b>			
<b>Revenue Source</b>	<b>Parking Spaces <sup>(1)</sup></b>	<b>Proposed Rate</b>	<b>Annual Projection <sup>(2)</sup></b>
General Visitor (Weekday)	681	\$2.00/hour for First 2 Hours \$8.00 Daily Max for 2+ Hours	\$2.0 million
General Visitor (Weekend/Holiday/Peak)	631	\$3.00/hour for First 2 Hours \$12.00 Daily Max for 2+ Hours	\$1.8 million
Monthly Parking	30	\$125/month	\$45,000
Valet Parking	80 +50 weekends	\$150/month \$6/weekend day per space	\$175,000
Parking Revenue Subtotal:			\$4.0 million
Expenses:			(\$683,000)
<b>Net Parking Revenue:</b>			<b>\$3.3 million</b>

(1) 797 spaces total; 6 spaces in the Parking garage will be designated for as-needed City staff parking (at no charge).

(2) Rounded.

Source: Parking Concepts Inc. (see Attachment 1)



### III. Bond Legal Structure

The Bonds would be issued as lease revenue bonds under the Joint Powers Authority legal framework utilizing the Public Facilities Financing Authority (the “Authority”) with the City General Fund providing the legal backstop for repayment. The Authority issues the lease revenue bonds with the bond repayment supported by the net annual fee revenue to be generated by the Parking Garage.

The legal structure for the Bonds involves lease agreements between the City and the Authority under which the City leases the site of the Parking Garage to the Authority and, in turn, the Authority leases the site and Parking Garage (once completed and available for use and occupancy) and rooftop park (subject to valuation) back to City in exchange for lease payments sufficient to cover the debt service over the life of the Bonds. Upon the completion of the construction, the Parking Garage and related improvements would be capital assets of the General Fund.

### IV. Summary of Key Terms

- **Issuer:** Public Facilities Financing Authority of the City of San Diego
- **Structure:** General Fund-backed Lease Revenue Bonds; issued using a standalone Indenture, Site Lease, and Facilities Lease (see “Financing & Legal Documents” below)
- **Financing Ordinance Not-to-Exceed Bond Authorization:** \$50 million. Under certain favorable bond market conditions, and assuming the net parking revenue projections discussed above, this not-to-exceed authorization allows for a bond offering that could provide a greater amount of project proceeds above the currently projected amount. As shown in the Estimated Sources and Uses of Funds table below, approximately \$44.5 million in bond issue proceeds is estimated based on an assumed interest rate of 4.25% generating approximately \$39 million in project proceeds. If for any reason the City is unable to use the proceeds for the Project, the financing ordinance also incorporates flexibility to use the proceeds for alternate General Fund capital improvement purposes.
- **Final Maturity:** 30 year term
- **Repayment Source:** While the General Fund will be pledged to the Bonds, annual debt service is expected to be paid from annual parking revenues net of operating expenses of the Parking Garage (\$3.3 million projected beginning year 1 of the Parking Garage opening). Annual debt service/lease payments for the Bonds after the capitalized interest period (see below) will commence beginning Fiscal Year 2021 and will be budgeted in a newly established fund within the Park and Recreation Department budget. In addition to paying debt service on the Bonds, this fund will also be programmed to collect parking revenues, pay Parking Garage operating expenses, and maintain Internal Safety and Capital Reserve Funds. In the event that annual parking garage revenue is insufficient to pay debt service in any given year, funds will be drawn from the Internal Safety Fund (discussed below).
- **Tax Status:** The Bonds will be issued as a tax-exempt issuance. Consistent with the IRS regulations for tax-exempt bonds, the weighted average life of the bonds will not exceed 120% of the useful life of the project funded by the bonds.

In addition, the current assumption envisions up to 30 garage spaces to be dedicated for the museums and other Balboa Park tenants in the form of monthly permits. Since these 501(c)(3) institutions may derive benefits from the Parking Garage over the life of the bond issuance, the City Council would conduct a publicly noticed Tax Equity and Fiscal Responsibility Act (TEFRA) hearing authorizing the issuance of the Bonds in order for the Bonds to be tax-exempt, pursuant to Section 147(f) of the Internal Revenue Code. In consulting with tax counsel, Stradling, Yocca, Carlson & Rauth, a TEFRA hearing would create flexibility for uses that may shift over the 30 years. This allows for maximum user benefits while optimizing the occupancy levels. This TEFRA hearing will be publicly noticed in an official newspaper 14 days prior to the hearing (see Attachment 2).

In order to insulate the General Fund, certain protection features are recommended, which are elaborated below:

- **Capitalized Interest Fund:** Since the parking revenues to support the debt service will not be available until after the completion and opening of the Parking Garage, a capitalized interest fund to pay interest on the Bonds during Parking Garage construction will be funded with proceeds of the bond issue, offsetting the need for the City to fund or front debt service during the construction of the Parking Garage. This is a standard feature for bond issues that provide funding for a capital facility that generates income and in which lease payments are derived from use of the financed facility. The amount of capitalized interest to be funded from bond proceeds is based on the anticipated Parking Garage construction timeframe/ opening date. Based on the current expected construction timeline, the capitalized interest period is estimated to be 2.5 years, which covers the construction period, plus an additional six months to mitigate the risk of any construction delays (actual period to be determined at the time of pricing).
- **Debt Service Coverage:** Under the proformas and revenue findings generated by PCI, net parking revenues are projected to be approximately 120% of the annual debt service under this structure. This coverage, which would be at least 20% above the required annual debt service payment, will cushion against possible revenue shortfalls by such amount and reduce the possibility that the City must cover a revenue shortfall through the General Fund.
- **Internal Safety Fund:** Upon the Parking Garage's opening, a City-held Internal Safety Fund is recommended to be maintained from excess net parking revenues to serve as a buffer against any revenue volatility over the 30-year term of the Bonds. This is designed to mainly mitigate the potential need for the General Fund to front any shortfall in revenue for annual debt service.

The Internal Safety Fund is anticipated to be initially funded by net parking revenues that are in excess of debt service collected following the completion of construction of the Parking Garage. The funding amount is targeted to be sufficient to cover up to one year of debt service, which is estimated to be approximately \$2.7 million, and is projected to be funded in approximately four years following the Parking Garage opening date. Upon fulfilling the Internal Safety Fund target, annual coverage revenue net of Parking Garage Operating expenses will be General Fund revenue that can be appropriated for any general purpose through the annual budget process.

Should a draw on the Internal Safety Fund be required for the City to meet debt service shortfalls in a given year, reducing the funding level below the established amount described above, excess net parking revenues in subsequent year(s) would be used to replenish the Internal Safety Fund to the original level. Since the Internal Safety Fund will be City-held and would not be pledged to the Bonds, no adverse repercussions (i.e., investor concerns, higher costs of borrowing for future issuances or impact on credit ratings) are anticipated if the City were to draw funds from the Internal Safety Fund in any given year.

- **Capital Reserve Fund:** A City-held Capital Reserve Fund will also be established once the Parking Garage becomes operational to cover the cost of capital improvements that the Parking Garage may need over its lifetime in order to maintain sound operational status. This is also designed to protect the General Fund from potential Parking Garage capital expenses and maintain the capital asset's strong condition on an ongoing basis.

Based on input from PCI, who reviewed industry standards, the Capital Reserve Fund will receive deposits annually at a rate of \$55 per parking space, or approximately \$44,000 per year, from Parking Garage revenue. The cumulative total, including assumed 2% annual growth, over the first 10 years is approximately \$480,000 and is factored into PCI operating expense projections, as discussed above.

## **V. City Council Approval Process**

The financing legal documents, including the Site Lease, Facility Lease, Indenture, Bond Purchase Agreement, and Continuing Disclosure Certificate, are approved via Ordinance. Staff will be docketing the Preliminary Official Statement (POS) for the Bonds separately to be authorized via Resolution in 2017, closer to the distribution of the POS to investors and pricing of the Bonds.

The financing documents that would be approved through the requested actions include:

1. **Site Lease** – The Site Lease is the agreement between the City and the Authority under which the City leases the site of the Parking Garage to the Authority.
2. **Facilities Lease** – The Facilities Lease is the agreement between the City and the Authority under which the City leases the site and the Parking Garage (once constructed) and rooftop park (subject to valuation) back from the Authority. The lease payments made by the City are equal to the principal and interest payments on the Bonds issued by the Authority. The Facilities Lease contains certain covenants of the City, including the necessary action to include all lease payments due under the lease in the City's operating budget each year.
3. **Indenture** – The Indenture is an agreement between the Authority and the trustee for the Bonds. The Indenture provides for the issuance of the Bonds, and includes information regarding the amount of the Bonds, the maturities and interest rates on the Bonds, the use of Bond proceeds, and the nature of the security for the Bonds (i.e., that the bonds are limited obligations of the Authority payable from lease payments). The Indenture also sets forth terms, including the specific rights, responsibilities, and obligations of each party with respect to the issuance of the Bonds. Under the

Indenture, the Authority assigns its rights to receive lease payments under the Facilities Lease to the trustee to make debt service payments to bondholders.

4. Bond Purchase Agreement (BPA) – The BPA is an agreement among the City, the Authority, and the Underwriters for the transaction pursuant to which the Authority agrees to sell, and the Underwriters agree to buy, the bonds. It specifies the purchase price of the bonds, and certain terms of the bonds, such as interest rates and maturities. The agreement also specifies documents that the parties must receive prior to bond closing, including the Bond Counsel opinion regarding the validity and tax exempt nature of the bonds as well as certain opinions and certificates of the City Attorney and other City and Authority officials. Such opinions and certificates would confirm, among other things, that all steps necessary to authorize the execution of the financing documents and the issuance of the bonds have been properly taken.
5. Continuing Disclosure Certificate – The Continuing Disclosure Certificate details the City's ongoing obligation to file annual reports and material events with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system for the benefit of the bondholders.

## **VI. Financing Time Line**

The City Council authorizations are expected to occur as follows:

November 14, 2016	Introduction of the Financing Ordinance authorizing the issuance of the bonds and approval of the financing documents; Conduct TEFRA hearing
December 6, 2016	Approval of the Financing Ordinance authorizing the issuance of the bonds and approval of the financing documents (2 <sup>nd</sup> reading)
August/ September 2017 (Subject to construction schedule)	Approval of the Preliminary Official Statement; Pricing of the Bonds and execution of the Bond Purchase Agreement; Bond Closing and delivery of construction proceeds deposited with Trustee
Late 2019	Anticipated Parking Garage opening date

## **VII. Financing Team**

The City's Financing Team for the Bonds consists of the same members as the 2012 Financing Team. Internal members include: the Chief Financial Officer and staff of the Debt Management Department; the Park and Recreation Department; the Comptroller's Office; Office of the City Treasurer; and the Financial Management Department. The Financing Team also includes staff of the Real Estate Assets Department, the City Attorney's Office, the Risk Management Department, and Public Works Department. External members of the team include: Parking Concepts, Inc. as parking revenue consultant; Fieldman, Rolapp, & Associates as financial advisor; Stradling, Yocca, Carlson & Rauth as bond and disclosure counsel; Loop Capital Markets as the senior managing underwriter; Kutak Rock LLP as underwriter's counsel; Wilmington Trust as trustee; and Chicago Title Company as title insurance provider.

The City Council authorized the City Attorney to retain Stradling, Yocca, Carlson & Rauth on July 9, 2012 (R-307558). If the proposed bond counsel contract amendment is approved, the term of the Agreement will be extended through December 31, 2018 and Stradling, Yocca, Carlson & Rauth will receive an amount not to exceed \$95,000, inclusive of out of pocket expenses. This is an increase of \$32,500 above the original 2012 contracted amount.

The requested contract amendment for Fieldman, Rolapp, & Associates as financial advisor would extend the term of service through December 31, 2018. In addition, compensation for Wilmington Trust as the trustee includes an initial fee of \$4,000 and ongoing annual fees of \$2,000.

**CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):**

- Goal #1: Provide high quality public service  
 Objective #1: Promote a customer-focused culture that prizes accessible, consistent, and predictable delivery of services
- Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods  
 Objective #3: Invest in infrastructure

**FISCAL CONSIDERATIONS:**

**I. Estimated Sources and Uses of Proceeds (preliminary and subject to change)**

Based upon the assumed interest rate (TIC) of approximately 4.25%, the issue size of the Bonds is estimated to be approximately \$44.5 million. This amount would provide sufficient funds to contribute \$39 million towards the construction fund for the Project, establish the required Capitalized Interest Fund and pay costs of issuance. It should be noted that current interest rate levels are lower than the 4.25% assumed rate. If interest rates are lower than the assumed level at the time of issuance, the City would be able to generate additional bond proceeds and correspondingly lower the capital outlay cash contribution to the project.

The table below provides a breakdown of the estimated sources and uses of funds.

**Estimated Sources and Uses of Bond Proceeds**

**Estimated Sources**

Bond Issue Proceeds	<u>\$44.5 million</u>
<b>Total Sources of Funds</b>	<b>\$44.5 million</b>

**Estimated Uses**

Deposit to Construction Fund	\$39.0 million
Deposit to Capitalized Interest Fund	\$ 4.9 million
Costs of Issuance <sup>(1)</sup>	<u>\$ 0.6 million</u>
<b>Total Uses of Funds</b>	<b>\$44.5 million</b>

<sup>(1)</sup> Costs of Issuance include underwriters' discount, bond and disclosure counsel fees, financial advisory fees, title insurance costs, appraisal fees, rating agency fees, trustee fees, and Preliminary Official Statement and Official Statement electronic printing/posting costs.

## **II. Projected Debt Service and Impact on Current Debt Ratios**

Annual debt service for a 30-year bond issue amounts to approximately \$2.7 million beginning in Fiscal Year 2021. This is approximately \$600,000, or approximately 20%, less than projected net parking revenues (approximately \$3.3 million in year 1).

The City's Debt Policy (Section 4.2), requires an analysis to be conducted to determine the impact of additional General Fund-backed bond obligations. Given that the proposed bond issuance has been structured to be self-supported by net parking revenues generated by the Parking Garage, the resulting impact is neutral to the City's General Fund lease burden ratio (debt service as a percentage of General Fund revenue). Based on currently outstanding lease revenue bond levels, the lease burden ratio is currently at 3.64% and is projected to steadily decline as outstanding principal is paid down in its ordinary course.

### **EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable):**

This agreement is subject to the City's Equal Opportunity Outreach Program (San Diego Ordinance No.18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

### **PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:**

On July 9, 2012, the City Council adopted Resolution R-307554, Certifying EIR – Balboa Park Plaza de Panama; Resolution R-307555, approving the amendments to the Balboa Park Master Plan and the Central Precise Plan; Resolution R-307556, granting Site Development Permit No. 837848; Resolution R-307557, declaring an intention to issue debt solely for the purpose of establishing compliance with Section 1.1.50-2 of the Treasury Regulations; and Resolution R-307558, accepting a contribution from the Plaza de Panama Committee.

On September 18, 2012, the City Council adopted Resolution R-307692, authorizing the budgeting and allocation in the amount of the Spreckels Organ Pavilion Public Parking Garage (Balboa Park) Lease Revenue Bonds, Series 2012C. On October 2, 2012, the City Council adopted Ordinance O-20205, approving the Site Lease, Facilities Lease, and Bond Purchase Agreement, and authorizing the Indenture by the Public Facilities Financing Authority and the issuance of the Authority's Lease Revenue Bonds.

On September 19, 2016, the City Council adopted Resolution R-310691, establishing Balboa Park Plaza de Panama as a CIP Project (Balboa Park Community Area District 3); thereby reinitiating the Project.

### **COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:**

Refer to Report No. 16-089, "Balboa Park Plaza de Panama Project" for a listing of various community participation and public outreach efforts related to the Project.

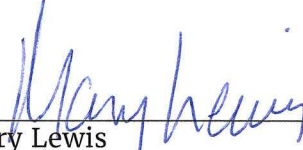
### **KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Business entities related to the requested actions are: Parking Concepts, Inc. (Parking Revenue Consultant); Fieldman, Rolapp, & Associates (Financial Advisor); Stradling, Yocca,

Carlson & Rauth (Bond and Disclosure Counsel); Loop Capital Markets (Senior Managing Underwriter); and Wilmington Trust N.A. (Trustee).



Lakshmi Kommi  
Debt Management Director



Mary Lewis  
Chief Financial Officer

Attachments:

1. Projected Revenues, Expenses and Net Operating Income, Balboa Park Parking Garage, Parking Concepts, Inc., dated October 2016
2. Tax Equity and Fiscal Responsibility Act (TEFRA) Notice

We have prepared revenue projections based on the following scenarios:

Updates to the 2012 baseline fee model, amending the weekday fee structure to an incremental rate of \$2.00 per hour for the first two hours, with a weekday daily maximum of \$8.00, weekend and holiday incremental rates of \$3.00 per hour for the first two hours, with weekend and holiday maximums of \$12.00.

Assumptions: ■ Rate structure:

	<u>Weekdays</u>	<u>Weekends &amp; Holidays</u>
Up to one hour	\$2.00	\$3.00
Between one and two hours	\$4.00	\$6.00
Over two hours – daily maximum	\$8.00	\$12.00

■ Weekends are Saturdays and Sundays.

■ City Holidays are:

New Year's Day	Independence Day
Martin Luther King, Jr. Day	Labor Day
Presidents' Day	Veterans Day
César Chávez Day	Thanksgiving Day
Memorial Day	Christmas Day

■ Duration usage statistics:

Less than one hour	3% of parkers
Between one and two hours	7%
Over two hours	90%

■ Number of turns based on average stay of three hours (2004 Jones and Jones Study)

■ Parking rate increases assumed every third year (Years 3, 6 and 9).

■ Payroll and payroll related increases for first three years based upon City and State mandated minimum wage levels.

■ Demand analysis and assumptions were similar to Jones and Jones report (11/04) and validated by KMA Study (6/12).

■ KMA evaluated demand based on 1/4- and 3/8-mile distance assumptions and found differences to be less than 1%, statistically insignificant.

■ 3<sup>rd</sup> Party Management Contract for parking operations.



## REVENUE

Parking Concepts, Inc.  
Balboa Park Feasibility Study  
Projected Revenue Stream - 797 Stall Garage

Created October 2016

Source	Comments	Projected Rate	Projected Occupancy	Number of Turns	Projected # of Tickets/Day	Projected Revenue Year 1 Monthly	Projected Revenue Year 1 Annual
<b>Visitor Revenue</b>							
Weekdays (Monday - Friday)	9:00am - 5:00pm	\$8.00	50%	2	797	\$125,175	\$1,502,105
Weekdays (Monday - Friday)	5:00pm - 10:00pm	\$8.00	36%	1	286	\$44,919	\$539,024
Weekends (Saturday & Sunday)	9:00am - 5:00pm	\$12.00	61%	2	970	\$95,079	\$1,140,952
Weekends (Saturday & Sunday)	5:00pm - 10:00pm	\$12.00	49%	1	389	\$38,130	\$457,557
City Holidays	9:00am - 5:00pm	\$12.00	61%	2	970	\$9,106	\$109,268
City Holidays	5:00pm - 10:00pm	\$12.00	49%	1	389	\$3,652	\$43,820
<b>Total Visitor Revenue</b>						<b>\$316,060</b>	<b>\$3,792,725</b>
<b>Monthly Parking Revenue</b>							
Regular Users	6:00am - 2:00am Daily	\$125	2%	NA	30	\$3,750	\$45,000
<b>Total Monthly Parking Revenue</b>						<b>\$3,750</b>	<b>\$45,000</b>
<b>Valet Parking Revenue</b>							
Designated Valet Spaces	Lowest Level	\$150/month	10%	NA	80	\$12,000	\$144,000
Weekend Valet Revenue	50 cars per weekend night	\$6.00	6%	NA	50	\$2,600	\$31,200
<b>Total Valet Parking Revenue</b>						<b>\$14,600</b>	<b>\$175,200</b>
<b>Total Projected Garage Revenue</b>						<b>\$334,410</b>	<b>\$4,012,925</b>

Note: Six designated spaces in the facility assumed for as-needed City staff parking (at no charge).

## REVENUE AND EXPENSES

Balboa Park Feasibility Study

Projected Parking Structure Financial Pro Forma - Created October 2016

797-Stall Garage

Parking Concepts, Inc.

Scenario: Weekday: \$2.00/hour for the first two hours, \$8.00 maximum; Weekend and holiday: \$3.00/hour for the first two hours, \$12.00 maximum

	Month	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	10-Year Total Cumulative
<b>Revenue</b>												
Transient Visitor Parking	\$316,060	\$3,792,720	\$3,792,720	\$4,045,694	\$4,045,694	\$4,045,694	\$4,315,542	\$4,315,542	\$4,315,542	\$4,603,389	\$4,603,389	\$41,875,928
Monthly Revenue	\$3,750	\$45,000	\$45,000	\$48,002	\$48,002	\$48,002	\$51,203	\$51,203	\$51,203	\$54,618	\$54,618	\$496,851
Valet Parking Revenue	\$14,600	\$175,200	\$175,200	\$186,886	\$186,886	\$186,886	\$199,351	\$199,351	\$199,351	\$212,648	\$212,648	\$1,934,407
<b>Total Revenue</b>	<b>\$334,410</b>	<b>\$4,012,920</b>	<b>\$4,012,920</b>	<b>\$4,280,582</b>	<b>\$4,280,582</b>	<b>\$4,280,582</b>	<b>\$4,566,097</b>	<b>\$4,566,097</b>	<b>\$4,566,097</b>	<b>\$4,870,655</b>	<b>\$4,870,655</b>	<b>\$44,307,185</b>
<b>Expenses</b>												
<b>Payroll Related</b>												
Manager Salary (1 FTE)	\$4,167	\$50,000	\$51,000	\$52,020	\$53,060	\$54,122	\$55,204	\$56,308	\$57,434	\$58,583	\$59,755	\$547,486
Supervisor Wages (1 FTE)	\$2,773	\$33,280	\$33,946	\$34,625	\$35,317	\$36,023	\$36,744	\$37,479	\$38,228	\$38,993	\$39,773	\$364,407
Customer Service Wages (5 FTE)	\$10,400	\$124,800	\$135,158	\$145,566	\$155,901	\$159,019	\$162,199	\$165,443	\$168,752	\$172,127	\$175,570	\$1,564,534
Parking Enforcement Wages (1FTE, 1PTE)	\$2,669	\$32,032	\$34,691	\$37,362	\$40,014	\$40,815	\$41,631	\$42,464	\$43,313	\$44,179	\$45,063	\$401,563
Vacation/Sickpay Accrual	\$1,040	\$12,486	\$13,249	\$14,018	\$14,783	\$15,079	\$15,380	\$15,688	\$16,002	\$16,322	\$16,648	\$149,655
Payroll Taxes	\$2,783	\$33,393	\$35,435	\$37,491	\$39,538	\$40,329	\$41,135	\$41,958	\$42,797	\$43,653	\$44,526	\$400,255
Workers' Compensation	\$2,227	\$26,725	\$28,359	\$30,004	\$31,642	\$32,275	\$32,921	\$33,579	\$34,251	\$34,936	\$35,634	\$320,325
Group Insurance (8 FTE)	\$2,800	\$33,600	\$35,280	\$37,044	\$38,896	\$40,841	\$42,883	\$45,027	\$47,279	\$49,643	\$52,125	\$422,617
Subtotal Payroll	\$28,860	\$346,316	\$367,118	\$388,128	\$409,152	\$418,502	\$428,097	\$437,946	\$448,055	\$458,435	\$469,093	\$4,170,843
<b>Garage Repairs &amp; Maintenance @ + 2%/year</b>												
Steam Cleaning	\$664	\$7,970	\$8,129	\$8,292	\$8,458	\$8,627	\$8,800	\$8,976	\$9,155	\$9,338	\$9,525	\$87,269
Contract Sweeping	\$797	\$9,564	\$9,755	\$9,950	\$10,149	\$10,352	\$10,559	\$10,771	\$10,986	\$11,206	\$11,430	\$104,723
Trash Removal	\$500	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171	\$65,698
Pest Control	\$500	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171	\$65,698
Lights	\$250	\$3,000	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585	\$32,849
Fire Alarm Monitoring	\$150	\$1,800	\$1,836	\$1,873	\$1,910	\$1,948	\$1,987	\$2,027	\$2,068	\$2,109	\$2,151	\$19,709
Elevator Maintenance	\$1,200	\$14,400	\$14,688	\$14,982	\$15,281	\$15,587	\$15,899	\$16,217	\$16,541	\$16,872	\$17,209	\$157,676
Graffiti Removal	\$250	\$3,000	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585	\$32,849
Landscaping	\$250	\$3,000	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585	\$32,849
Parking Equipment Repair & Maintenance	\$250	\$3,000	\$20,400	\$20,808	\$21,224	\$21,649	\$22,082	\$22,523	\$22,974	\$23,433	\$23,902	\$201,994
Painting	\$250	\$3,000	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585	\$32,849
Subtotal Repairs & Maintenance Expenses	\$5,061	\$60,734	\$79,289	\$80,874	\$82,492	\$84,142	\$85,825	\$87,541	\$89,292	\$91,078	\$92,899	\$834,166
<b>Administrative Expenses @ + 2%/year</b>												
Business Licenses	\$42	\$500	\$510	\$520	\$531	\$541	\$552	\$563	\$574	\$586	\$598	\$5,475
General Liability Insurance	\$956	\$11,477	\$11,706	\$11,940	\$12,179	\$12,423	\$12,671	\$12,925	\$13,183	\$13,447	\$13,716	\$125,668
Property Insurance	\$3,985	\$47,820	\$48,776	\$49,752	\$50,747	\$51,762	\$52,797	\$53,853	\$54,930	\$56,029	\$57,149	\$523,616
Damage Claims	\$500	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171	\$65,698
Uniforms	\$455	\$5,456	\$5,565	\$5,676	\$5,790	\$5,906	\$6,024	\$6,144	\$6,267	\$6,392	\$6,520	\$59,739
Telephone/Radios	\$250	\$3,000	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585	\$32,849
Tickets, Keycards, & Validations	\$250	\$3,000	\$3,060	\$3,121	\$3,184	\$3,247	\$3,312	\$3,378	\$3,446	\$3,515	\$3,585	\$32,849
First Aid Supplies	\$100	\$1,200	\$1,224	\$1,248	\$1,273	\$1,299	\$1,325	\$1,351	\$1,378	\$1,406	\$1,434	\$13,140
Stationary & Office Supplies	\$200	\$2,400	\$2,448	\$2,497	\$2,547	\$2,598	\$2,650	\$2,703	\$2,757	\$2,812	\$2,868	\$26,279
Supplies - Water	\$100	\$1,200	\$1,224	\$1,248	\$1,273	\$1,299	\$1,325	\$1,351	\$1,378	\$1,406	\$1,434	\$13,140
Signage	\$200	\$2,400	\$2,448	\$2,497	\$2,547	\$2,598	\$2,650	\$2,703	\$2,757	\$2,812	\$2,868	\$26,279
Barricades & Cones	\$500	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171	\$65,698
Credit Card Fees	\$4,166	\$49,992	\$50,992	\$52,012	\$53,052	\$54,113	\$55,195	\$56,299	\$57,425	\$58,574	\$59,745	\$547,398
Professional Fees	\$2,000	\$24,000	\$24,480	\$24,970	\$25,469	\$25,978	\$26,498	\$27,028	\$27,568	\$28,120	\$28,682	\$262,793
Subtotal Administrative Expenses	\$13,704	\$164,445	\$167,733	\$171,088	\$174,510	\$178,000	\$181,560	\$185,191	\$188,895	\$192,673	\$196,527	\$1,800,622
<b>Other Operating Expenses @ + 2%/year</b>												
Utilities	\$3,500	\$42,000	\$42,840	\$43,697	\$44,571	\$45,462	\$46,371	\$47,299	\$48,245	\$49,210	\$50,194	\$459,888
Garage Capital Reserve Fund	\$3,653	\$43,835	\$44,712	\$45,606	\$46,518	\$47,448	\$48,397	\$49,365	\$50,353	\$51,360	\$52,387	\$479,981
Miscellaneous Expenses	\$500	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171	\$65,698
Parking Operator Management Fee	\$1,600	\$19,200	\$19,584	\$19,976	\$20,375	\$20,783	\$21,198	\$21,622	\$22,055	\$22,496	\$22,946	\$210,235
Subtotal Other Operating Expenses	\$9,253	\$111,035	\$113,256	\$115,521	\$117,831	\$120,188	\$122,592	\$125,043	\$127,544	\$130,095	\$132,697	\$1,215,802
<b>Total Expenses</b>	<b>\$56,877</b>	<b>\$682,530</b>	<b>\$727,396</b>	<b>\$755,611</b>	<b>\$783,985</b>	<b>\$800,832</b>	<b>\$818,074</b>	<b>\$835,722</b>	<b>\$853,787</b>	<b>\$872,281</b>	<b>\$891,216</b>	<b>\$8,021,433</b>
<b>Net Income/(Operating Deficit)</b>	<b>\$277,533</b>	<b>\$3,330,390</b>	<b>\$3,285,524</b>	<b>\$3,524,970</b>	<b>\$3,496,597</b>	<b>\$3,479,750</b>	<b>\$3,748,023</b>	<b>\$3,730,375</b>	<b>\$3,712,310</b>	<b>\$3,998,374</b>	<b>\$3,979,439</b>	<b>\$36,285,752</b>

## NOTICE OF PUBLIC HEARING

### CITY OF SAN DIEGO

NOTICE IS HEREBY GIVEN in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), that on \_\_\_\_\_, 2016, at 2:00 o'clock p.m. Council Chambers, 12<sup>th</sup> Floor, at 202 "C" Street, City Administration Building, San Diego, California, the Council of the City of San Diego (the "City Council") will conduct a public hearing at which it will hear and consider information concerning the possible issuance by the Public Facilities Financing Authority of the City of San Diego (the "Authority") of Lease Revenue Bonds (the "Bonds") in an aggregate principal amount not to exceed \$50,000,000 to finance a portion of the costs of the acquisition, construction, installation and equipping of a parking facility, including a rooftop park thereon (the "Parking Facility"), together with a bypass bridge, a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and certain capital improvements related to the Parking Facility and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City's capital improvement program (such capital improvements, together with the Parking Facility, are collectively referred to as the "Project").

The Parking Facility will be located on a site on a parcel adjacent to 2159 Pan American Plaza, San Diego, CA 92101 owned by the City which is in Balboa Park, a 1200 acre centrally located municipal park owned by the City adjacent to downtown. Portions of the Parking Facility may be used from time to time by one or more nonprofit entities and, as a result, the City may elect to treat a portion of the Bonds as "qualified 501(c)(3) bonds" within the meaning of the Code.

If issued, the Bonds will be secured by lease payments to be made by the City to the Authority pursuant to a Facilities Lease.

This item may begin at any time after the time specified. Any interested person may address the City Council to express support or opposition to this issue. Time allotted to each speaker is determined by the Chair and, in general, is limited to three (3) minutes; moreover, collective testimony by those in support or opposition shall be limited to no more than fifteen (15) minutes total per side.

Those unable to attend the hearing may write a letter to the Mayor and City Council, Attention: City Clerk, City Administration Building, 202 "C" Street, San Diego, CA 92101 3862, Mail Station 2A; or you can reach us by E-mail at: [Hearings1@sanidiego.gov](mailto:Hearings1@sanidiego.gov) or FAX: (619) 533-4045. All communications will be forwarded to the Mayor and City Council.

If you wish to challenge the City Council's actions on the above proceedings in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence to the City Council at or prior to the public hearing. All correspondence should be delivered to the City Clerk (at the above address) to be included in the record of the proceedings.

This material is available in alternative formats upon request. To order information in an alternative format, or to arrange for a sign language or oral interpreter for the meeting, please call the Clerk's office at least five working days prior to the meeting at (619) 533-4000 (voice) or (619) 236-7012 (TT).

ALL PERSONS HAVING ANY INFORMATION RELEVANT TO THE PROPOSED  
ISSUANCE OF THE BONDS DESCRIBED ABOVE ARE HEREBY INVITED TO APPEAR AT  
THE TIME AND PLACE MENTIONED ABOVE TO PRESENT SUCH INFORMATION TO THE  
CITY COUNCIL.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
City Clerk of the City of San Diego

Publish: \_\_\_\_\_, 2016

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

RESOLUTION NUMBER FA-2016-8

ADOPTED ON DECEMBER 6, 2016

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION AND DELIVERY OF A SITE LEASE, A FACILITIES LEASE, AN INDENTURE AND A BOND PURCHASE AGREEMENT, APPROVING THE ISSUANCE AND SALE OF NOT TO EXCEED \$50,000,000 PRINCIPAL AMOUNT OF THE AUTHORITY'S LEASE REVENUE BONDS (BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS), AND APPROVING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, The City of San Diego (City), the Successor Agency to the Redevelopment Agency of the City of San Diego and the Housing Commission of the City of San Diego have entered into that certain Amended and Restated Joint Exercise of Powers Agreement, dated as of January 1, 2013 (Joint Powers Agreement) which created and established the Public Facilities Financing Authority of the City of San Diego (Authority) for the purpose, among others, of issuing bonds to finance and refinance public capital improvements for the benefit of the City; and

WHEREAS, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Act) and the Joint Powers Agreement, the Authority is authorized to issue bonds for financing and refinancing public capital improvements whenever there are significant public benefits; and

WHEREAS, the Authority has determined that it is desirable, furthers the public purpose and will result in significant public benefits to the citizens of the City, within the meaning of the Act, to assist the City in the acquisition, construction, installation and equipping of a parking facility, including a rooftop park thereon (Parking Facility), together with a bypass bridge, a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and certain capital improvements related to the Parking

Facility and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City's capital improvement program (such capital improvements, together with the Parking Facility, are collectively referred to as the Project); and

WHEREAS, in order to accomplish the financing of the Project and to achieve such public purposes, the Authority has determined to authorize the issuance of not to exceed \$50,000,000 aggregate principal amount of its Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds (Balboa Park Parking Related Public Improvements) (Bonds) payable from Base Rental Payments (defined below) to be made by City pursuant to the Facilities Lease (defined below); and

WHEREAS, to accomplish the forgoing, the Authority has determined: to enter into an Indenture (Indenture) with Wilmington Trust, National Association, as trustee (Trustee); to lease from the City the real property of the City (Site) pursuant to and as described in a Site Lease (Site Lease) between the City and the Authority; and to lease the Site and the Parking Facility (together, the Leased Premises) back to the City pursuant to a Facilities Lease (Facilities Lease) between the Authority and the City, under which the City will agree to make Base Rental Payments to the Authority which, together with capitalized interest on the Bonds, are calculated to be sufficient to enable the Authority to pay the principal of and interest on the Bonds when due and payable; and

WHEREAS, the Authority will sell the Bonds in a negotiated sale pursuant to the Bond Purchase Agreement (Purchase Agreement) among the Authority, the City and Loop Capital Markets LLC, as the representative of any underwriter of the Bonds named therein (Underwriters); and

WHEREAS, the City adopted an Ordinance (Bond Ordinance) authorizing and approving (i) the issuance of the Bonds, (ii) the legal documents under and pursuant to which the Bonds will be issued and paid, and (iii) the financing of the Project, which Bond Ordinance will be signed by the

Mayor and for which the 30-day referendum period will end on the 31st day following the Mayor's signing thereof; and

WHEREAS, there has been presented to this meeting the following documents relating to the issuance of the Bonds:

a. a proposed form of Site Lease between the City and the Authority under which the City will lease the Site to the Authority; and

b. a proposed form of Facilities Lease between the Authority and the City under which the Authority will lease the Leased Premises to the City; and

c. a proposed form of Indenture between the Authority and the Trustee under which the Authority will issue the Bonds; and

d. a proposed form of Bond Purchase Agreement among the City, the Authority and the Underwriters (the documents described in paragraphs a through d are collectively referred to as the Financing Documents); and

WHEREAS, the Authority is authorized to undertake the actions described in this Resolution pursuant to the laws of the State of California, NOW, THEREFORE,

BE IT RESOLVED by the Board of Commissioners of the Public Facilities Financing Authority of the City of San Diego as follows:

1. The Authority hereby finds and determines that the statements set forth above the recitals to this Resolution are true and correct.

2. The form and content of the Site Lease, pursuant to which the City leases the Site to the Authority, is hereby authorized and approved. Any of the Chair of the Authority or Vice Chair of the Authority and each of them or any of their respective designees (each, an Authorized Signatory) are hereby severally authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Site Lease in substantially the form presented to and considered at this meeting, and the Secretary of the Authority or her specified designees, and each of them, are authorized and

directed to attest thereto, with such additions and changes therein as any Authorized Signatory shall determine to be necessary and desirable and that such Authorized Signatory believes to be in the best interests of the Authority (including any changes to the description of the Site as approved by the City), and as are approved as to form by the General Counsel to the Authority or his specified designee, such approvals to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Site Lease.

3. The form and content of the Facilities Lease, pursuant to which the Authority leases the Leased Premises to the City, is hereby authorized and approved. Each Authorized Signatory is hereby severally authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Facilities Lease in substantially the form presented to and considered at this meeting, and the Secretary of the Authority or her specified designees, and each of them, are authorized and directed to attest thereto, with such additions and changes therein as any Authorized Signatory shall determine to be necessary and desirable and that such Authorized Signatory believes to be in the best interests of the Authority (including any changes to the description of the Leased Premises as approved by the City), and as are approved as to form by the General Counsel to the Authority or his specified designee, such approvals to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Facilities Lease.

4. The form and content of the Indenture, pursuant to which the Authority will issue its Bonds, is hereby authorized and approved. Each Authorized Signatory is hereby severally authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Indenture in substantially the form presented to and considered at this meeting, and the Secretary of the Authority or her specified designees, and each of them, are authorized and directed to attest thereto, with such additions and changes therein as any Authorized Signatory shall determine to be necessary and desirable and that such Authorized Signatory believes to be in the best interests of the Authority, and as are approved as to form by the General Counsel to the Authority or his specified designee, such



approvals to be conclusively evidenced by such Authorized Signatory's execution and delivery of the Indenture.

5. The Authority hereby approves and authorizes the issuance and sale of its Bonds in a principal amount not to exceed \$50,000,000 by negotiated sale provided that: (i) the sale and issuance of the Bonds is determined by the Chief Operating Officer or the Chief Financial Officer of the City to be consistent with the City's Debt Policy, and (ii) there has first been presented to the Disclosure Practices Working Group and this Board for approval a form of preliminary official statement for the Bonds. Each Authorized Signatory is authorized to execute and deliver, for and in the name and on behalf of the Authority, the Bonds substantially in the form attached to the Indenture presented to and considered at this meeting, and the Secretary of the Authority or her specified designees, and each of them, are authorized and directed to attest thereto and affix a seal of the Authority thereon, with such additions and changes as any Authorized Signatory determines to be necessary and desirable and that such Authorized Signatory believes to be in the best interests of the Authority, such approvals to be conclusively evidenced by the execution of said Bonds.

6. The form and content of the Purchase Agreement are hereby authorized and approved. Each Authorized Signatory is hereby severally authorized and directed for and in the name and on behalf of the Authority, to execute and deliver the Purchase Agreement in connection with the purchase and sale of the Bonds, substantially in the form presented to and considered at this meeting, with such changes and additions therein as such Authorized Signatory shall determine to be necessary and desirable and that such Authorized Signatory believes to be in the best interests of the Authority and the City and as are approved as to form by the General Counsel to the Authority or his specified designee, such approvals will be conclusively evidenced by such Authorized Signatory's execution and delivery of the Purchase Agreement.

7. All actions heretofore taken by any Authorized Signatory or by any officers, employees, agents or directors of the Authority with respect to the issuance, delivery or sale of the

Bonds, or in connection with or related to any of the Financing Documents or of the other documents referenced herein or related to financing the Project, are hereby approved, confirmed and ratified. Any Authorized Signatory, the Secretary of the Authority, the General Counsel to the Authority and other officers, employees, agents and directors of the Authority are, and each of the foregoing acting alone or through their specified designee, is hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things, take any and all actions, and execute and deliver such documents, agreements and certificates (including, but not limited to, the tax compliance certificate), which they, or any of them, may deem necessary or advisable to effectuate the purposes of this Resolution or of the Financing Documents or the lawful issuance and delivery of the Bonds and to consummate the transactions authorized hereby and evidenced by the Financing Documents. In addition, any Authorized Signatory is hereby authorized to approve additions and changes to the Financing Documents and the other documents authorized by this Resolution (including, but not limited to, establishing the options for redemption), if believed by the Chair, the Chief Operating Officer or the Chief Financial Officer of the City, or the designee of either of such officers, with the advice of the City's Financial Advisor for the Bonds, to be in the best interests of the City in light of market conditions, such determination to be conclusively evidenced by the execution and delivery of the Financing Documents by the City), as such Authorized Signatory shall determine to be necessary and desirable and that such Authorized Signatory believes to be in the best interests of the Authority, such determination shall be conclusively evidenced by the execution and delivery of such Financing Documents and other documents by the Authority; and provided further that no such addition or changes may be inconsistent with limitations in Section 5 hereof.

8. This Resolution shall take effect immediately upon its adoption.

ADOPTED, SIGNED AND APPROVED this 6th day of December, 2016, by the following vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

VACANT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

\_\_\_\_\_  
Chair, Board of Commissioners

Attest:

\_\_\_\_\_  
Secretary to Board of Commissioners

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Attn: Robert J. Whalen  
Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660

(Space above for Recorder's Use)

This document is recorded for the benefit of the City  
of San Diego and the recording is fee-exempt under  
Section 6103 of the California Government Code  
and has a term of less than 35 years.

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**SITE LEASE**

**Dated as of [DATE] 1, 2017**

by and between

**THE CITY OF SAN DIEGO**

and the

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

Relating to the

**\$(AMOUNT)**

**PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE BONDS, SERIES 2017\_\_  
(BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS)**

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## **SITE LEASE**

This Site Lease (the "Site Lease") is dated as of [DATE] 1, 2017, and is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation duly organized and existing under its charter and the laws of the State of California (the "City"), and the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the "Authority"). (Capitalized terms used in the WHEREAS clauses which are not defined therein shall have the meaning provided in Section 1 hereof).

### **WITNESSETH:**

**WHEREAS**, the City has determined it is in the public interest and will benefit the inhabitants of the City that the City finance a portion of the costs of the acquisition, construction, installation and equipping of a parking facility, including a rooftop park thereon (the "Parking Facility"), together with a bypass bridge, a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and certain capital improvements related to the Parking Facility and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City's capital improvement program (such capital improvements, together with the Parking Facility, are collectively referred to as the "Project"); and

**WHEREAS**, to finance the Project, the City will enter into this Site Lease with the Authority pursuant to which the City will lease to the Authority certain real property belonging to the City, on which the Parking Facility will be located (the "Site," as more particularly described in Exhibit A hereto); and

**WHEREAS**, concurrently with the execution of this Site Lease, the Authority and the City are entering into a Facilities Lease, dated as of [DATE] 1, 2017 (the "Lease"), pursuant to which the Authority will lease the Site and the Parking Facility to the City; and

**WHEREAS**, to provide funds to finance the Project, the City has requested the Authority to issue its \$[AMOUNT] Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements) (the "Series 2017\_\_ Bonds") pursuant to an Indenture, dated as of [DATE] 1, 2017 (the "Indenture"), by and between the Authority and the Trustee; and

**WHEREAS**, the City is authorized by its Charter and other applicable law to lease the Site to the Authority pursuant to this Site Lease, and to lease the Site and the Parking Facility from the Authority pursuant to the Lease and to consummate financing of the Project; and has determined that construction of the Project and the lease of the Site is a necessary and proper public purpose; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

**Section 1. Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms pursuant to the Lease, as it may be amended pursuant to its terms, and, if such terms are not defined in the Lease, then such terms shall have the meanings given such terms pursuant to the Indenture, as it may be amended pursuant to its terms.

**Section 2. Lease of the Site.** The City hereby leases to the Authority and the Authority hereby rents from the City, on the terms and conditions hereinafter set forth, the Site, subject to the Permitted Encumbrances (as defined in the Lease) existing as of the date hereof.

**Section 3. Term.**

(a) The term of this Site Lease shall commence on the Closing Date and shall end on the Expiry Date, unless such term is extended or sooner terminated, all as provided in the Lease. If prior to the Expiry Date, all rental payable under the Lease shall have been paid and all Bonds have been fully paid or defeased in accordance with Article X of the Indenture, the term of this Site Lease shall end immediately upon the City providing written notice from the Trustee to the Authority to the effect that all Bonds have been fully paid or defeased in accordance with Article X of the Indenture.

(b) The term of this Site Lease shall not be extended beyond the Expiry Date, except as otherwise provided in the Lease.

**Section 4. Rent.** In consideration of the City's lease to the Authority of the Site, the Authority shall pay to the City rent of \$1.00 as full consideration for this Site Lease over its term. This rent shall be considered paid to the City upon the deposit of the Bond proceeds to the Construction Fund on the date that the Bonds are issued. The Authority hereby waives any right that it may have under the laws of the State of California to receive a rebate of such rent in full or in part in the event there is a substantial interference with the use and right of possession by the Authority of the Site or portion thereof as a result of material damage, destruction or condemnation.

**Section 5. Purpose.** The Authority shall use the Site solely for the purpose of subleasing the same to the City pursuant to the Lease and the City hereby leases the Site to the Authority expressly on said condition; provided, however, that in the event of default by the City under the Lease, the Authority may exercise the remedies provided in the Lease.

**Section 6. Owner in Fee.** The City covenants that it has the right to lease the Site hereunder free and clear of all liens, claims or encumbrances, except Permitted Encumbrances.

**Section 7. Assignments and Subleases.** The Authority shall not assign its rights hereunder or sublet the Site, except as provided in the Lease and the Indenture and as security for the Bonds.

**Section 8. Right of Entry.** The City reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time: to inspect the same; to make any

repairs, improvements or changes necessary for the preservation thereof; to perform any of its other duties; or exercise any of its other rights, as contemplated under the Lease.

**Section 9. Termination.** The Authority agrees, upon the termination hereof, to quit and surrender the Site in the same good order and condition as the same was in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any additions, improvements or alterations to the Site at the time of the termination hereof shall remain thereon and title thereto shall vest in the City.

**Section 10. Default.** In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms hereof, which default continues for thirty (30) days following notice and demand by the City for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and the Lease shall be deemed to occur as a result thereof; provided, however, prior to the Expiry Date, the City shall have no power to terminate this Site Lease by reason of any default on the part of the Authority, if such termination would affect or impair any assignment of the Lease then in effect between the Authority and the Trustee.

**Section 11. Quiet Enjoyment.** The Authority at all times during the term hereof shall peaceably and quietly have, hold and enjoy the Site without suit, trouble or hindrance from the City.

**Section 12. Waiver of Personal Liability.** All liabilities hereunder on the part of the Authority shall be solely corporate liabilities of the Authority, and the City hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability hereunder. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable hereunder for anything done or omitted to be done by the Authority hereunder.

**Section 13. Eminent Domain.** In the event the whole or any portion of the Site is taken by eminent domain proceedings, any interests of the Authority shall be recognized in accordance with Section 8.01 of the Lease.

**Section 14. Observance and Performance under the Indenture.** The City hereby agrees and covenants that during the term hereof and so long as the Indenture remains in effect, it will observe and perform the agreements, conditions, covenants and terms required to be observed or performed by it contained in the Indenture.

**Section 15. Amendments.** This Site Lease may be amended: (a) for the purpose of effecting an Addition, Substitution or Removal, as provided in the Lease, and (b) for any other purpose subject to the same requirements provided in the Lease for amendments to the Lease.

**Section 16. Partial Invalidity.** If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 17. Notices.** All written notices to be given shall be given by first class mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the Authority:     Public Facilities Financing Authority of the City of San Diego  
                                     c/o City of San Diego  
                                     Office of the City Clerk  
                                     202 C Street, 2<sup>nd</sup> Floor  
                                     San Diego, California 92101  
                                     Phone: (619) 553-400020  
                                     Fax: (619) 553-4045

Copy to:                     City Attorney's Office  
                                     1200 Third Avenue  
                                     San Diego, California 92101  
                                     Attention: Deputy City Attorney – Finance  
                                     Phone: (619) 236-6220  
                                     Fax: (619) 236-7215

If to the City:             City of San Diego  
                                     Department of Finance  
                                     202 C Street, 9<sup>th</sup> Floor  
                                     San Diego, California 92101  
                                     Attention: Chief Financial Officer  
                                     Phone: (619) 236-5941  
                                     Fax: (619) 236-6606

**Section 18. 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 hereof.

**Section 19. Execution in Counterparts.** This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 20. Governing Law.** This Site Lease shall be governed by and construed and interpreted in accordance with the laws of the State of California.

[Remainder of Page Left Intentionally Blank]



IN WITNESS WHEREOF, the parties hereto have executed and entered into this Site Lease by their officers thereunder duly authorized as of the day and year first above written.

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Authorized Signatory

ATTEST:

By: \_\_\_\_\_  
Elizabeth Maland, City Clerk

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, CITY ATTORNEY

By: \_\_\_\_\_  
Deputy City Attorney

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, CITY ATTORNEY

By: \_\_\_\_\_  
Deputy General Counsel

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF SAN DIEGO                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF SAN DIEGO                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

**EXHIBIT A**  
**DESCRIPTION OF SITE**

EXHIBIT 'A'

APN: 534-450-08

All that portion of Pueblo Lot 1136 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the Miscellaneous Map thereof No. 36, filed in the Office of the County Recorder of said San Diego County on November 14, 1921, being more particularly described as follows:

**Beginning** at horizontal control point SDGPS 3135, said point being a set lead and tag stamped 'City Engr' per Record of Survey No. 14492, filed in the said Office of the County Recorder on March 31, 1994; Thence leaving said horizontal control point SDGPS 3135 North 04°33'55" West 1751.02 feet to the **True Point of Beginning**; Thence North 39°58'11" East 480.24 feet; Thence South 50°01'48" East 170.33 feet; Thence South 39°59'13" West 16.99 feet; Thence South 50°01'36" East 22.76 feet; Thence South 39°50'55" West 471.33 feet; Thence North 50°12'02" West 142.84 feet; Thence North 39°56'37" East 8.50 feet; Thence North 50°01'37" West 51.24 feet to the **True Point of Beginning**.

The above described parcel contains 93,751.87 square feet, 2.1522 acre.

Said bearings are based on the California Coordinate System NAD 83 (Epoch 1991.35) Zone 6. Distances shown hereon are grid. To obtain a ground distance, divide the grid distance by 1.0000064.

*Richard T. McCormick* 10-10-2016  
Richard T. McCormick, LS 7450  
Senior Land Surveyor, Field Engineering  
City of San Diego  
My Registration Expires 12/31/2016

File: Balboa Park Parking.doc  
I/O 22000118 October 2016



RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Attn: Robert J. Whalen  
Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660

(Space above for Recorder's Use)

This document is recorded for the benefit of the City  
of San Diego and the recording is fee-exempt under  
Section 6103 of the California Government Code.

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**FACILITIES LEASE**

**Dated as of [DATE] 1, 2017**

by and between

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

and

**THE CITY OF SAN DIEGO**

---

Relating to the

**\$(AMOUNT)**

**PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE BONDS, SERIES 2017\_\_  
(BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS)**

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## **LEASE**

This Facilities Lease (the “Lease”), dated as of [DATE] 1, 2017, is by and between the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”), as lessor, and THE CITY OF SAN DIEGO, a municipal corporation duly organized and existing under its charter and laws of the State of California (the “City”), as lessee. (Capitalized terms used in the Whereas clauses and not defined therein shall have the meanings provided in Section 1.01 hereof.)

### **WITNESSETH:**

**WHEREAS**, the City has determined it is in the public interest and will benefit the inhabitants of the City that the City finance a portion of the costs of the acquisition, construction, installation and equipping of a parking facility, including a rooftop park thereon (the “Parking Facility”), together with a bypass bridge, a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and certain capital improvements related to the Parking Facility and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City’s capital improvement program (such capital improvements, together with the Parking Facility, are collectively referred to as the “Project”); and

**WHEREAS**, to finance the Project, the City will enter into a Site Lease, dated as of even date herewith (the “Site Lease”), with the Authority, pursuant to which the City will lease to the Authority certain real property belonging to the City on which the Parking Facility will be constructed, as more particularly described in Exhibit A hereto (the “Site”), and concurrent with execution and delivery of the Site Lease, the Authority will, pursuant to this Lease, lease the Site and the Parking Facility (together, the “Leased Premises”) to the City and the City will lease the Leased Premises from the Authority; and

**WHEREAS**, to provide funds to finance the Project, the City has requested the Authority to issue its \$[AMOUNT] Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements) (the “Series 2017\_\_ Bonds”) pursuant to an Indenture, dated as of [DATE] 1, 2017 (the “Indenture”), by and between the Authority and the Trustee; and

**WHEREAS**, the City is authorized by its Charter and other applicable law to lease the Site to the Authority pursuant to the Site Lease, and to lease the Leased Premises from the Authority pursuant to this Lease and to consummate the financing of the Project; and has determined that the Project and the lease of the Site to the Authority under the Site Lease and the lease of the Leased Premises from the Authority hereunder is a necessary and proper public purpose; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease do exist, have happened and have been performed in a regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease.

**NOW, THEREFOR,** IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** Unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any supplement and amendment hereof and of the Site Lease have the meanings herein specified. All other capitalized terms used herein without definition shall have the meanings as set forth in the Indenture.

“Addition” means the lease of additional real property and/or improvements hereunder from the Authority to the City, as provided in Section 3.06 hereof.

“Additional Rental” means all amounts payable by the City pursuant to Section 6.01(b) hereof.

“Additional Bonds” means all bonds issued pursuant to Sections 2.11 and 2.12 of the Indenture.

“Authorized Representative” means: (a) with respect to the Authority, its Chair, Vice Chair, Treasurer or Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chair, and filed with the City and the Trustee; and (b) with respect to the City, its Chief Operating Officer, its Chief Financial Officer or its Mayor, or any other person duly designated by its Chief Operating Officer, its Chief Financial Officer or its Mayor as an Authorized Representative of the City by a written certificate of its Chief Operating Officer, its Chief Financial Officer or its Mayor filed with the City and the Trustee.

“Authority” means the Public Facilities Financing Authority of the City of San Diego, a joint powers agency created by the City, the Successor Agency to the Redevelopment Agency of the City of San Diego and the Housing Authority of the City of San Diego pursuant to California Government Code Sections 6500 *et seq.* and the Third Amended and Restated Joint Exercise of Power Agreement, dated January 1, 2013, and any successor thereto.

“Base Rental Payments” means all amounts payable by the City as Base Rental pursuant to Section 6.01(a) hereof.

“Base Rental Payment Schedule” means the schedule of Base Rental Payments attached hereto as Exhibit B, as from time to time amended as permitted in the Lease.

“Bonds” means the Series 2017\_\_ Bonds, and all Additional Bonds.

“City” means The City of San Diego, a municipal corporation duly organized and existing under its charter and the laws of the State.

“Claim” shall have the meaning contained in Section 10.03 hereof.

“Closing Date” shall mean the date the Series 2017\_\_ Bonds are issued and delivered to the initial purchasers thereof.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. References to the Code include relevant applicable regulations and proposed regulations thereunder, as amended from time to time, and any successor provision to those Sections, regulations or proposed regulations and, in addition, all revenue rulings, announcements, notices, procedures and judicial determinations under the foregoing applicable to the Bonds.

“Completion Certificate” means the certificate of the City filed with the Trustee and signed by an Authorized Representative of the City, as prescribed by Section 5.02 hereof.

“Damaged Improvement” shall have the meaning contained in Section 8.01(a) hereof.

“Default” shall have the meaning contained in Section 11.01 hereof.

“Event of Default” shall have the meaning contained in Section 11.01 hereof.

“Expiry Date” means \_\_\_\_\_ 15, 20\_\_, except as extended or sooner terminated or extended pursuant to Sections 4.01 or 6.04 of this Lease, or such other date or dates as set forth in an amendment to this Lease.

“Financing Documents” means this Lease, the Site Lease, and the Indenture.

“Indenture” means that certain Indenture, dated as of even date herewith, by and between the Authority and the Trustee, providing for the terms and conditions of the Series 2017\_\_ Bonds and any Additional Bonds, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Lease” means this Facilities Lease, dated as of [DATE] 1, 2017, by and between the Authority and the City, as initially executed and as it may from time to time be amended or supplemented in accordance with the terms hereof.

“Lease Payment Date” means \_\_\_\_\_ 10 and \_\_\_\_\_ 10 of each year commencing \_\_\_\_\_ 10, 20\_\_.

“Lease Year” means the period from \_\_\_\_\_ 16 to and including the following \_\_\_\_\_ 15, during the term hereof; except that the initial Lease Year means the period from the Closing Date to and including \_\_\_\_\_ 15, 20\_\_.

“Leased Premises” means the Site and the Parking Facility, as the same may be changed from time to time by Removal, Addition or Substitution as provided in Section 3.06 hereof; subject, however, to Permitted Encumbrances.

“Net Proceeds” means, collectively, the net proceeds of any insurance or condemnation award resulting from any damage or destruction of any portion of the Leased Premises payable in accordance with Section 8.01 hereof.

“Opinion of Bond Counsel” means a written opinion of (a) Stradling Yocca Carlson & Rauth, a Professional Corporation, or (b) any other firm of attorneys, designated by the City, of nationally

recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America. Any Opinion of Bond Counsel may be based, insofar as it relates to factual matters, upon information that is in the possession of the City or the Trustee, as applicable, upon a certificate or opinion of, or representation by, an officer or officers of the City or the Trustee, unless such counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which their opinion may be based, is erroneous.

“Opinion of Counsel” means a written opinion of an attorney or a firm of attorneys (who may be counsel for the City or the Trustee) retained by the City or the Trustee. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon information that is in the possession of the City or the Trustee, as applicable, upon a certificate or opinion of, or representation by, an officer or officers of the City or the Trustee, unless such counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which his or her opinion may be based, is erroneous.

“Parking Facility” means that certain parking facility to be constructed on the Site, including a rooftop park thereon, and all additions, betterments, extensions and improvements thereto.

“Permitted Encumbrances” means, as of any particular time:

(i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to Section 7.02, permit to remain unpaid; (ii) the Lease, the Site Lease and the Indenture, as each may be amended from time to time pursuant to its terms; (iii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, which (A) exist as of the date of recordation of this Lease, or (B) are established thereafter, including without limitation, in a supplement or amendment hereto with respect to an Addition to or Substitution of the Leased Premises so long as such encumbrance does not substantially interfere with City’s right to use and occupy such real property; and (v) rights granted by the City pursuant to Section 3.04(b) hereof; and in all cases will not result in abatement of Base Rental Payments payable by the City under this Lease.

“Project” means the Parking Facility and certain capital improvements related to the Parking Facility, including a bypass bridge and a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City’s capital improvement program as designated in a written certificate of an Authorized Representative of the City.

“Removal” means the release of all or a portion of the Leased Premises from the leasehold hereof as provided in Section 3.06 hereof.

“Series 2017\_\_ Bonds” means the Authority’s Lease Revenue Bonds (Balboa Park Parking Related Public Improvements), Series 2017\_\_.

“Site” means that certain real property which is the subject of the Site Lease comprising the land described in Exhibit A hereto, as the same may be changed from time to time by Removal, Addition or Substitution as provided in Section 3.06 hereof; subject, however, to Permitted Encumbrances.

“Site Lease” means that certain Site Lease, dated as of even date herewith, by and between the City and the Authority, under which the City leases the Site to the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Substitution” means the release of all or a portion of the Leased Premises from the leasehold hereof, and the lease of substituted real property and/or improvements hereunder as provided in Section 3.06 hereof.

“Tax Certificate” means the Tax Certificate, dated as of the Closing Date, executed and delivered by the Authority and the City in connection with the original execution and delivery of the Series 2017\_\_ Bonds, which sets forth certain conditions, covenants, expectations and elections of the Authority and the City with respect to the Series 2017\_\_ Bonds.

“Trustee” means Wilmington Trust, National Association, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, the trustee acting in its capacity as such under the Indenture, or any successor as therein provided.

**Section 1.02 Construction.** The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders. All references herein to “Sections” and other subdivisions hereof are to the corresponding Sections or subdivisions of this Lease; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Section or subdivision hereof.

**Section 1.03 Actions by Authority and City.** Except as otherwise expressly provided herein, for all purposes of this Lease and Site Lease, the Authorized Representative of the Authority shall be authorized to act upon behalf of the Authority, and the Authorized Representative of the City shall be authorized to act upon behalf of the City.

## **ARTICLE II**

### **REPRESENTATIONS, COVENANTS AND WARRANTIES**

**Section 2.01 Representations, Covenants and Warranties of the City.** The City makes the following representations, covenants and warranties to the Authority as of the date of the execution and delivery of this Lease:

(a) The City is a municipal corporation and chartered city duly organized and validly existing under the laws of the State of California.

(b) The City’s Charter and other applicable laws of the State of California authorize the City to enter into this Lease and the Site Lease and to enter into the transactions

contemplated by and to carry out its obligations under each of the such agreements, and by proper action the City has duly authorized and executed each of such agreements in accordance with the City's Charter and other applicable laws of the State of California.

(c) The representatives of the City executing this Lease and the Site Lease have been fully authorized to execute the same pursuant to an ordinance duly adopted by the City Council of the City.

(d) This Lease and the Site Lease have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.

(e) The execution and delivery of this Lease and the Site Lease, 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 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 this Lease and the Site Lease, or the financial condition, assets, properties or operations of the City.

(f) No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease and the Site Lease, or the consummation of any transactions herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(g) 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 this Lease, including the construction of the Project by the City as agent for the Authority, or the validity of this Lease, the Site Lease, or the Indenture, 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 this Lease, the Site Lease, or the Indenture, or the financial conditions, assets, properties or operations of the City.

(h) The lease and use of the Leased Premises by the City are essential to the purposes of the City.

(i) The City will comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed and delivered by the City in connection with the issuance

of the Series 2017\_\_ Bonds. Notwithstanding any other provision of this Lease, failure of the City to comply with the Continuing Disclosure Certificate shall not constitute an Event of Default hereunder; provided, however, the Trustee, to the extent indemnified from and against any cost, liability or expense, may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Certificate) or the Owners or beneficial owner of at least 25% aggregate principal amount of Outstanding Series 2017\_\_ Bonds, shall) or any such Owner or beneficial owner may, take such actions as may be necessary and appropriate, to cause the City to comply with the provisions of the Continuing Disclosure Certificate.

**Section 2.02 Representations, Covenants and Warranties of the Authority.** The Authority makes the following representations, covenants and warranties to the City as the basis for its undertakings herein contained:

(a) The Authority is a joint exercise of powers authority duly organized, existing and in good standing under and by virtue of the laws of the State of California; has power to enter into this Lease, the Site Lease and the Indenture; is possessed of full power to own and hold real and personal property and to lease and sell the same; and has duly authorized the execution and delivery of all of such agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.

(b) The Authority will not pledge the Base Rental Payments or other amounts derived from the Leased Premises and from its other rights under this Lease, and will not encumber the Leased Premises, except as provided under the terms of this Lease and the Indenture.

(c) The representatives of the Authority executing this Lease, the Site Lease and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.

(d) This Lease, the Site Lease and the Indenture have been authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(e) The execution and delivery of this Lease, the Site Lease and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contractor other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease and the Indenture or the financial condition, assets, properties or operations of the Authority.

(f) No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this

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

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

(h) Except as provided in this Lease and in the Indenture, the Authority will not assign the Site Lease or this Lease, its right to receive Base Rental Payments from the City, or its duties and obligations under the Site Lease or this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in herein and therein.

### **ARTICLE III**

#### **THE LEASED PREMISES**

##### **Section 3.01 Lease of the Leased Premises; Title to Leased Premises.**

(a) The Authority hereby leases to the City, and the City hereby leases back from the Authority, the Leased Premises, all on the conditions and terms hereinafter set forth. The City hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Leased Premises for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the Authority to carry out its agreements and covenants contained herein and in the Indenture, and the City hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Leased Premises.

(b) During the term of this Lease, title to all moveable property (i) that is located on, in or about the Leased Premises on the Closing Date, or (ii) that is placed on, in or about Leased Premises by the City at any time thereafter during the term of this Lease, shall remain the property of the City (or property of the City's tenant, as provided in the lease between the City and such tenant).

(c) During the term of this Lease, the Authority shall hold leasehold title to the Site and shall be the owner of the Parking Facility, except for any items added to the Leased Premises by the City pursuant to Section 3.05 hereof.

(d) If both the Trustee's and the City's estate under this or any other lease relating to the Leased Premises or any portion thereof shall at any time for any reason become vested in one owner, this Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the City and the Trustee so elect as evidenced by recording a written



declaration so stating; and unless and until the City and the Trustee so elect, the Authority shall continue to have and hold a leasehold estate in the Leased Premises pursuant to the Site Lease throughout the term thereof and the term of this Lease, and this Lease shall be deemed and constitute a lease of the Leased Premises. The City hereby covenants not to permit or consent to any such merger as long as any Bonds are Outstanding.

**Section 3.02 Quiet Enjoyment.** The parties hereto mutually covenant that the City, so long as it observes and performs the agreements, conditions, covenants and terms required to be observed or performed by it contained herein and is not in default hereunder, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Leased Premises without suit, trouble or hindrance from the Authority, subject only to the Permitted Encumbrances.

**Section 3.03 Right of Entry and Inspection.** The Authority shall have the right to enter the Leased Premises and inspect the Leased Premises during reasonable business hours (and in emergencies at all times) for any purpose connected with the Authority's rights or obligations hereunder and for all other lawful purposes.

**Section 3.04 Prohibition Against Encumbrance; Permitted Assignments.**

(a) The City and the Authority will not create, or suffer to be created, any mortgage, pledge, lien, charge or other encumbrance upon the Leased Premises, except Permitted Encumbrances. The City and the Authority will not sell or otherwise dispose of the Leased Premises or any property essential to the proper operation of the Leased Premises, except as otherwise provided herein.

(b) Notwithstanding anything to the contrary herein contained, but subject to the rights of the City pursuant to Section 3.04(a), the City may assign, transfer or sublease any and all of the Leased Premises or its other rights hereunder, provided that: (i) the rights of any assignee, transferee or sublessee shall be subordinate to all rights of the Authority and Trustee hereunder; (ii) no such assignment, transfer or sublease shall relieve the City of any of its obligations hereunder; (iii) the assignment, transfer or sublease shall not result in a breach of any covenant of the City contained in any other Section hereof; (iv) any such assignment, transfer or sublease shall by its terms expressly provide that the fair rental value of the Leased Premises for all purposes shall be first allocated to this Lease, as the same may be amended from time to time before or after any such assignment, transfer or sublease; and (v) no such assignment, transfer or sublease shall confer upon the parties thereto (other than the City) any remedy which allows reentry upon the Leased Premises.

**Section 3.05 Additions and Improvements to Leased Premises; Mechanics Liens.**

(a) The City shall have the right during the term of this Lease to make any additions or improvements to the Leased Premises, to attach fixtures, structures or signs, and to affix any personal property to the Leased Premises, so long as the fair rental value of the Leased Premises is not thereby reduced. Title to all fixtures, equipment or personal property, which is placed by the City in or on the Leased Premises, shall remain in the City to the extent that such items may be removed from the Leased Premises without damage thereto. Title to any personal property, improvements or fixtures placed in or on any portion of the Leased Premises by any sublessee or licensee of the City shall be controlled by the sublease or license agreement between such sublessee or licensee and the City, which sublease or license agreement shall not be inconsistent with this Lease.

(b) In the event the City shall at any time during the term hereof cause any improvements to the Leased Premises to be constructed or materials to be supplied in or upon or attached to the Leased Premises, the City shall pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon, about or relating to the Leased Premises and shall keep the Leased Premises free of any and all liens against the Leased Premises or the Authority's interest therein, except for Permitted Encumbrances. In the event any such lien attaches to or is filed against the Leased Premises or the Authority's interest therein, and the enforcement thereof is not stayed or if so stayed such stay thereafter expires, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City shall forthwith pay and discharge or cause to be paid and discharged such judgment.

### **Section 3.06 Substitution, Removal or Addition of Leased Premises.**

(a) The City and the Authority may amend this Lease and Site Lease to make an Addition, Substitution or Removal upon compliance with all of the applicable conditions set forth in subsection (b). After a Substitution or Removal, the part of the Leased Premises for which the Substitution or Removal has been effected shall be released from the leasehold hereunder and under the Site Lease.

(b) No Substitution, Addition or Removal shall take place hereunder and under the Site Lease until the City delivers to the Authority and the Trustee each of the following:

(1) executed counterparts (in proper recordable form) of amendments to the Site Lease and this Lease, containing: (A) in the event of a Removal, a legal description of all or part of the Leased Premises to be released; (B) in the event of a Substitution, a legal description of the real property and a description of any improvements to be substituted in its place; and (C) in the case of an Addition, a legal description of the real property and a description of any improvements to be added.

(2) a certificate of the City, evidencing that the annual fair rental value (which may be based on, but not limited to, the construction or acquisition cost or replacement cost of such Substitution or Addition to the City) of the property that will constitute the Leased Premises after such Addition, Substitution or Removal, will be at least equal to 100% of the maximum amount of Base Rental Payments becoming due in the then current Lease Year or in any subsequent Lease Year during term of this Lease.

(3) an Opinion of Counsel to the effect that: (A) the amendments hereto and to the Site Lease in connection with such Substitution, Addition or Removal of property have been duly authorized, executed and delivered and constitute the valid and binding obligations of the City and the Authority enforceable in accordance with their terms; and (B) the Substitution, Addition or Removal is authorized or permitted under this Lease.

(4) with respect to an Addition or Substitution of property, a leasehold owner's title insurance policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing title insurance policy or policies, resulting in title

insurance with respect to the Leased Premises after such Addition or Substitution in an amount at least equal to the aggregate principal amount of Bonds Outstanding; each such insurance instrument, when issued, shall name the Authority and Trustee as the insured, and shall insure the leasehold estate of the Authority and the Trustee, as assignee of the Authority, in such real property subject only to Permitted Encumbrances.

(5) in the event of a Substitution or Addition, an opinion of the City Attorney of the City to the effect that the exceptions, if any, contained in the title insurance policy referred to in (4) above (A) constitute Permitted Encumbrances and (B) do not substantially interfere with the use and occupancy by the City of the Leased Premises following such Substitution or Addition.

(6) an Opinion of Bond Counsel that the Substitution, Addition and/or Removal will not, in and of itself, cause the interest on any Bonds to be includable in gross income of the Owners thereof for federal income tax purposes.

(7) a Certificate of the City stating that the City has complied with the covenants contained in clauses (1) and (2) of Section 7.03(a) hereof with respect to the Substitution or Addition.

(8) in the event of a Substitution or Addition, a certified copy of an ordinance duly adopted by the City Council of the City authorizing the amendments hereto and to the Site Lease in connection with such Substitution or Addition.

## **ARTICLE IV**

### **TERM OF THE LEASE**

#### **Section 4.01 Commencement of the Lease; Term of Lease.**

(a) The term of this Lease shall commence on the Closing Date, and shall end on the Expiry Date, unless the Expiry Date is extended or is sooner terminated as hereinafter provided. If on the Expiry Date, the stated rental payable hereunder shall not be fully paid and all Bonds shall not be fully paid and defeased as provided under Article X of the Indenture, or if the rental payable hereunder shall have been abated at any time or for any reason, then the term of this Lease shall be extended until the first Business Day following the day the rental payable hereunder shall be fully paid and all Bonds shall be fully paid and defeased as provided under Article X of the Indenture; provided, however, that the term of this Lease shall in no event be extended beyond 10 years after the then existing Expiry Date.

If prior to the Expiry Date, the rental payable hereunder shall be fully paid and all Bonds shall have been fully paid or defeased in accordance with Article X of the Indenture, the term of this Lease shall end immediately upon the City providing written notice from the Trustee to the Authority to the effect that all Bonds have been fully paid or defeased in accordance with Article X of the Indenture.

(b) The City shall take possession of the Leased Premises on the Closing Date, and the obligation of the City to pay Base Rental Payments shall commence on the date set forth in

Exhibit B hereto and to pay Additional Rental shall commence on the Closing Date, subject, in each case, to the limitations set forth in Section 6.01 hereof.

## **ARTICLE V**

### **USE OF PROCEEDS; CONSTRUCTION OF THE PROJECT; TAX COVENANTS**

**Section 5.01 Use of Proceeds of the Series 2017\_\_ Bonds.** The parties hereto agree that the proceeds of the Series 2017\_\_ Bonds will be used to pay the costs of the Project, costs of issuance of the Series 2017\_\_ Bonds and capitalized interest on the Series 2017\_\_ Bonds as set forth in the Indenture.

#### **Section 5.02 Construction of the Project.**

(a) The Authority hereby appoints the City as its agent to construct the Project. The City covenants to proceed with all practical dispatch to construct the Project in accordance with the approved plans and specifications. The City and the Authority expect that the Parking Facility will be available for the beneficial use and occupancy of the City by \_\_\_\_\_, 1, 20\_\_ and the City covenants to use its best efforts to complete the Parking Facility by that date. In the event that a Completion Certificate has not been filed for the Parking Facility by \_\_\_\_\_, 1, 20\_\_ and no other funds are available in the Capitalized Interest Fund on such date, an Authorized Representative of the Authority shall direct that an amount be transferred from the Construction Fund to the Capitalized Interest Fund in order to pay interest on the Series 2017\_\_ Bonds to the expected completion date for the Parking Facility.

(b) In constructing the Project, the City shall comply with all applicable provisions of law related to such construction including, without limitation, the City Charter and the Public Contract Code and the Government Code of the State of California.

#### **Section 5.03 Tax Covenants for the Series 2017\_\_ Bonds.**

(a) The City covenants that it will comply with all provisions of the Tax Certificate, including that it will use, and will restrict the investment of, the proceeds of the Series 2017\_\_ Bonds in such manner and to such extent as may be necessary so that: (i) the Series 2017\_\_ Bonds will not (A) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Code, or (B) be treated other than as obligations to which Section 103 of the Code applies, and (ii) the interest thereon will not be treated as a preference item for purposes of the federal alternative minimum tax.

(b) The City further covenants (i) that it will take or cause to be taken such actions that may be required of it for the interest on the Series 2017\_\_ Bonds to be and remain excluded from gross income for federal income tax purposes, (ii) that it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (iii) that it, or persons acting for it, will, among other acts of compliance, (A) apply the proceeds of the Series 2017\_\_ Bonds to construct the Project, (B) restrict the yield on investment property, (C) make timely and adequate payments to the federal government as required under the Tax Certificate, (D) maintain books and records and make calculations and reports, and (E) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

(c) The Authorized Representative of the City is hereby authorized: (i) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Series 2017\_\_ Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(B) and (C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Series 2017\_\_ Bonds or interest thereon or assisting compliance with requirements for the purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties or making payments of special amounts in lieu of making computations determined by that officer, which action shall be in writing and signed by the Authorized Representative, (ii) to take any and all other actions, make or obtain calculations, make payments and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Series 2017\_\_ Bonds, and (iii) to set forth in the Tax Certificate and/or in one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Series 2017\_\_ Bonds, the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 2017\_\_ Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest represented by the Series 2017\_\_ Bonds.

(d) The City may create, or may direct the Trustee to create, such accounts or sub-accounts in any fund or account held under the Indenture as it shall deem necessary or advisable in order to comply with the foregoing covenants and Tax Certificate.

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.01 Rental Payments.** The City agrees, subject to the terms hereof, to pay to the Trustee, as assignee of the Authority pursuant to the Indenture, without deduction or offset of any kind, as rental for the use and occupancy of the Leased Premises, the following amounts at the following times:

(a) Base Rental Payments. Subject to the provisions in Section 6.04 below, the City shall pay, from any and all legally available funds, to the Trustee, as assignee of the Authority, the Base Rental Payments with respect to the Leased Premises at the times and in the amounts set forth in the Base Rental Payment Schedule attached hereto as Exhibit B and incorporated herein. Notwithstanding the foregoing, the City shall deposit with the Trustee not later than (i) the Lease Payment Date preceding each Interest Payment Date and (ii) if principal is payable on other than an Interest Payment Date, the third Business Day preceding each date on which principal is due, the Base Rental Payment due on such date, as the case may be, and the same shall be held by the Trustee as security for the Base Rental Payments due on such dates.

If the term of this Lease shall have been extended pursuant to Section 4.01(a) hereof, Base Rental Payment installments shall continue to be due on the third Business Day preceding any date payment of principal of or interest on any Bonds is due, continuing to and including the date of termination of this Lease.

(b) Additional Rental. The City shall also pay, as rental hereunder in addition to the Base Rental Payments, to the Authority or the Trustee, as hereinafter provided, such amounts, if

any, in each year as shall be required for the payment of all costs and expenses incurred by the Authority in connection with the execution, performance or enforcement of the Site Lease or this Lease or the assignment hereof pursuant to the Indenture or the respective interests in the Leased Premises and the lease of the Leased Premises by the Authority to the City hereunder, including but not limited to all fees, costs and expenses and all administrative costs of the Authority relating to the Leased Premises including, without limiting the generality of the foregoing, salaries and wages of employees, overhead, insurance premiums, taxes and assessments (if any), expenses, compensation and indemnification of the Trustee (to the extent not paid or otherwise provided for out of the proceeds of the sale of the Bonds), fees of auditors, accountants, attorneys or engineers, insurance premiums, rebate amounts payable to the United States pursuant to the Tax Certificate, and all other reasonable and necessary administrative costs of the Authority or charges required to be paid by it to comply with the terms of the Bonds or the Indenture, or otherwise incurred in connection with the administration hereof or thereof.

(1) The foregoing Additional Rental, if any, 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, the Trustee or the Trustee on behalf of the Authority, for one or more of the items above described, or that such amount is then so payable for such items. Amounts so billed shall be paid by the City not later than the latest time as such amounts may be paid without penalty or, if no penalty is associated with a late payment of such amounts, within 30 days after receipt of a bill by the City for such amounts.

(2) The Authority may issue bonds and may enter into leases to finance facilities other than the Leased Premises. The administrative costs of the Authority shall be allocated among said facilities and the Leased Premises, as hereinafter in this paragraph provided. Any taxes levied against the Authority with respect to the Leased Premises, the fees of the Trustee, and any other expenses directly attributable to the Leased Premises shall be included in the Additional Rental payable hereunder. Any taxes levied against the Authority with respect to real property other than the Leased Premises, the fees of any trustee or paying agent under any resolution securing other bonds of the Authority or any trust agreement or indenture other than the Indenture, and any other expenses directly attributable to any facilities other than the Leased Premises, shall not be included in the administrative costs of the Leased Premises and shall not be paid from the Additional Rental payable hereunder. Any expenses of the Authority not directly attributable to any particular project of the Authority shall be equitably allocated among all such projects, including the Leased Premises, in accordance with sound accounting practice. In the event of any question or dispute as to such allocation, the written opinion of an independent firm of certified public accountants, employed by the Authority to consider the question and render an opinion thereon, shall be final and conclusive determination as to such allocation. The Trustee may conclusively rely upon a certificate of the Authority in making any determination that costs are payable as Additional Rental hereunder, and shall not be required to make any investigation as to whether or not the items so requested to be paid are expenses of operation of the Leased Premises.

(c) Consideration for Leasehold Estate and Fair Rental Value. Such payments of Base Rental Payments and Additional Rental for each Lease Year or portion thereof during the term of this Lease shall constitute the total rental for such Lease Year or portion thereof and shall be paid or payable by the City from funds of the City lawfully available therefor for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of, the Leased Premises by the City for and during such Lease Year.

(1) The City has determined and certified to the Trustee and the Authority on the Closing Date that such total rental in any Lease Year is not in excess of the total fair rental value of the Leased Premises for such Lease Year. In making such determination, the City has considered a variety of factors including: (i) the uses and purposes served by the Leased Premises and the benefits therefrom that will accrue to the City by reason of this Lease and to the general public by reason of the City's use and occupancy of the Leased Premises, including the general public's use of portions of the Leased Premises; (ii) the costs of construction and the replacement costs of the Project; (iii) revenues that will be available from the Parking Garage; (iv) third-party or City appraisals; and (v) upon payment of all rental due hereunder and the termination of this Lease and the Site Lease, the transfer by the Authority to the City, pursuant to of the Site Lease and without any additional payment or consideration by the City, of all of the Authority's right, title and interest with respect to the Leased Premises.

(2) The parties hereby acknowledge that the parties may amend this Lease from time to time to amend the Base Rental Payments payable hereunder so that Additional Bonds may be executed and delivered pursuant to Section 6.07 hereto and Sections 2.11 and 2.12 of the Indenture. Notwithstanding anything to the contrary herein contained, this Lease may not be amended in a manner such that the sum of Base Rental Payments (including Base Rental Payments payable pursuant to such amendment) and Additional Rental with respect to Outstanding Bonds and Additional Bonds, in any Lease Year is in excess of the annual fair rental value of the Leased Premises and other land and improvements leased to the City hereunder for such Lease Year, after giving effect to the application of proceeds of any Additional Bonds executed and delivered in connection therewith.

(d) Payment Provisions; Credit. Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Trustee at the designated corporate trust office of the Trustee, or such other place as the Trustee shall designate in writing to the City. Any such installment of rental accruing hereunder which shall not be paid when due shall remain due and payable until received by the Trustee.

(e) Notwithstanding any dispute between the City and the Authority, the City shall make all rental payments when due, without deduction or offset of any kind, and shall not withhold any rental payments pending the final resolution of any such dispute. The obligation of the City to pay Base Rental Payments is an absolute and unconditional obligation, subject to the abatement of Base Rental Payments pursuant to Section 6.04 hereof. In the event of a determination that the City was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall, at the option of the City, be credited against subsequent rental payments due hereunder or be refunded at the time of such determination.

(f) Amounts required to be deposited by the City with the Trustee pursuant to this Section 6.01(d) on any date shall be reduced to the extent of amounts on deposit on such date in the Interest Account or the Principal Account held under the Indenture.

(g) Base Rental Payments are subject to abatement as provided in Section 6.04 hereof.

(h) Nothing contained in this Lease shall prevent the City from making, from time to time, contributions or advances to the Authority for any purpose now or hereafter authorized

by law, including the making of repairs to, or the restoration of, the Leased Premises in the event of damage to or the destruction of the Leased Premises.

(i) Notwithstanding the City may cease to use any portion of the Leased Premises, the City shall remain obligated to pay Base Rental Payments and Additional Payments in consideration of the availability of the Leased Premises for the use and occupancy of the City, as provided in Section 6.01.

**Section 6.02 Annual Budgets.** The City covenants to take such action as may be necessary to include all Base Rental Payments and Additional Rental payments due under this Lease in its operating budget for each fiscal year (an "Operating Budget") and to make all necessary appropriations for such Base Rental Payments and Additional Rental payments. In addition, to the extent permitted by law, the City covenants to take such action as may be necessary to amend or supplement the budget appropriations for payments under this Lease at any time and from time to time during any fiscal year in the event that the actual Base Rental Payments and Additional Rental paid in any fiscal year exceeds the pro rata portion of the appropriations then contained in the City's budget.

These covenants on the part of the City to include the Base Rental Payments and Additional Rental in the Operating Budget and to make the necessary appropriations therefor are deemed to be, and shall be construed to be, ministerial duties imposed by law and by the City's Charter, and it shall be the duty of applicable officials of the City to take such action and do such things as are required by law and by the City's Charter 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.

**Section 6.03 Application of Rental Payments.** All rental payments received shall be applied: first to the Base Rental Payments due hereunder (including any prepayment premium components); and thereafter to all Additional Rental due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

**Section 6.04 Rental Abatement.**

(a) To the extent described below, the amount of Base Rental Payments and Additional Rental due hereunder shall be abated during any period in which by reason of delay in the completion of the Parking Facility beyond \_\_\_\_\_ 1, 20\_\_ there is substantial interference with the City's use and occupancy of the Leased Premises. The amount of such abatement shall be such that the resulting Base Rental Payments and Additional Payments do not exceed the annual fair rental value (as determined by an certified real estate appraiser selected by the City, who may be an employee of the City) for the use and occupancy of the Site and the completed portions of the Parking Facility made available to the City. Any such abatement pursuant to this Section 6.04(a) shall continue until the Parking Facility is substantially complete and made available for beneficial use and occupancy by the City.. Notwithstanding the foregoing, the City shall remain obligated to make Base Rental Payments and Additional Payments hereunder to the extent there are proceeds of any completion or performance bonds or moneys paid to the City by the contractors or any other person as liquidated damages as a result of any defect or delay in completion of the Project or to the extent that amounts in the Revenue Fund and the Capitalized Interest Fund are available to pay Base Rental Payments which would otherwise be abated under this Section 6.04(a). Any amounts



received by the City as liquidated damages shall be deposited by the City immediately upon receipt in the Revenue Fund to the extent necessary to pay the principal and interest on the Series 2017\_\_\_ Bonds to the expected completion date of the Parking Facility.

(b) Except to the extent of (i) amounts held by the Trustee in the Interest Account or Principal Account of the Revenue Fund, (ii) amounts received in respect of use and occupancy insurance, and (iii) amounts, if any, otherwise legally available to the Trustee for payments in respect of the Bonds, during any period in which, by reason of material damage, destruction, title defect or condemnation, there is substantial interference with the use and occupancy by the City of any portion of the Leased Premises, rental payments due hereunder with respect to the Leased Premises shall be abated to the extent that the annual fair rental value of the portion of the Leased Premises in respect of which there is no substantial interference is less than the annual Base Rental Payments and Additional Rental, in which case rental payments shall be abated only by an amount equal to the difference. In the case of abatement relating to the Leased Premises, the amount of annual rental abatement shall be such that the resulting Base Rental Payments in any Lease Year during which such interference continues, excluding any amounts described in clauses (i), (ii), (iii) above, do not exceed the annual fair rental value for each Lease Year of the portions of the Leased Premises with respect to which there has not been substantial interference, as evidenced by a certificate of an Authorized Representative of the City. Such abatement shall continue for the period commencing with the date of such damage, destruction, title defect or condemnation and ending with the restoration of the Leased Premises or portion thereof to tenantable condition or correction of title defect or substantial completion of the work of repair or replacement of the portions of the Leased Premises so damaged, destroyed, defective or condemned.

(c) In the event the City shall assign, transfer or sublease any or all of the Leased Premises or other rights hereunder, as permitted by Section 3.04(b) hereof, for purposes of determining the annual fair rental value available to pay Base Rental Payments and Additional Rental, annual fair rental value of the Leased Premises shall first be allocated to this Lease as provided in clause (iv) of Section 3.04(b) hereof.

(d) Any abatement of rental payments pursuant to this Section shall not be considered an Event of Default as defined in Article XI hereof, but shall result in the extension of the Expiry Date by a period equal to the period of abatement for which Base Rental Payment has not been paid in full (but in no event later than 10 years after the then existing Expiry Date), and Base Rental Payment for such extension period shall be equal to the unpaid Base Rental Payments during the period of abatement but without interest thereon. The City waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate this Lease by virtue of any such interference and this Lease shall continue in full force and effect.

(e) In the event that rental is abated, in whole or in part, pursuant to this Section due to damage, destruction, title defect or condemnation of any part of the Leased Premises and the City is unable to repair, replace or rebuild the Leased Premises from the Net Proceeds, if any, the City agrees to apply for and to use its best efforts to obtain any appropriate state and/or federal disaster relief in order to obtain funds to repair, replace or rebuild the Leased Premises.

(f) The City hereby acknowledges and agrees that during any period of abatement with respect to all or any part of the Leased Premises, the Trustee on behalf of the City shall use the proceeds of use and occupancy insurance to make payments of principal and interest on the Bonds.

(g) The City has the option, but not the obligation, to deliver Substituted Property for all or a portion of the Leased Premises pursuant to Section 3.06 hereof during any period of abatement.

**Section 6.05 Prepayment of Base Rental Payments.** The Authority hereby grants an option to the City to prepay the principal component of the Base Rental Payments in full, or in part, in order to effect a redemption of the Series 2017\_\_Bonds, in whole or in part, pursuant to Section 4.01(c) of the Indenture or a defeasance of the Series 2017\_\_Bonds, in whole or in part, pursuant to Sections 10.01 and 10.02 of the Indenture.

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 forty five (45) days prior to the due date of such Base Rental Payment. Such option shall be exercised in the event of prepayment in full, by depositing 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 Base Rental Payments on the prepayment date, or, in the event of prepayment in part, by depositing 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 Base Rental Payments then due but unpaid. In the event of prepayment in part, the partial prepayment shall be applied against Base Rental Payments in such manner as the City shall determine and if the City shall fail to make such determination, starting with the next succeeding payment dates. Base Rental Payments due after any such partial prepayment shall be in the amounts set forth in a revised Base Rental 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 B attached hereto taking into account said partial prepayment.

**Section 6.06 Obligation to Make Rental Payments.** The agreements and covenants on the part of the City contained herein shall be deemed to be and shall be construed to be 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 officials to enable the City to carry out and perform the agreements and covenants contained herein agreed to be carried out and performed by the City.

THE OBLIGATION OF THE CITY OF SAN DIEGO TO MAKE BASE RENTAL PAYMENTS DOES NOT CONSTITUTE AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE BONDS NOR THE OBLIGATION TO MAKE BASE RENTAL PAYMENTS CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

**Section 6.07 Additional Bonds.** In addition to the Series 2017\_\_ Bonds to be executed and delivered under the Indenture, the Authority may, from time to time at the request of the City, but only upon satisfaction of the conditions to the execution and delivery of Additional Bonds set forth in Sections 2.11 and 2.12 of the Indenture, enter into a Supplemental Indenture to authorize Additional Bonds the proceeds of which may be used as provided in Section 2.11 of the Indenture and as provided in the Supplemental Indenture; provided that prior to or concurrently with the execution and delivery of the Additional Bonds, the City and the Authority shall have entered into an amendment to this Lease providing for any required adjustment in the Base Rental Payments to be

made hereunder to pay Debt Service on such Additional Bonds, subject to the limitations set forth in Section 6.01(c) hereof.

## **ARTICLE VII**

### **MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES**

**Section 7.01 Maintenance of the Leased Premises by the City.** The City agrees that, at all times during the term hereof, it will maintain, preserve and keep, at its own cost and expense, or cause to be maintained, preserved and kept, the Leased Premises and every portion thereof, which is owned by the City, in good repair, working order and condition and that it will from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals. The Authority shall have no responsibility in any of these matters or for the making of additions or improvements to the Leased Premises.

**Section 7.02 Taxes, Other Governmental Charges and Utility Charges.** The parties hereto contemplate that the Leased Premises will be used for public purposes by the City and, therefore, that every portion of the Leased Premises, which is owned by the City, will be exempt from all taxes presently assessed and levied with respect to real and personal property, respectively. In the event that the use, possession or acquisition by the City or the Authority of the Leased Premises is found to be subject to taxation in any form, the City will pay, or cause to be paid, during the term hereof, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Premises and any other property acquired by the City in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Leased Premises, as well as all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Premises; provided, however, that with respect to any governmental charges or taxes that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are accrued during such time as this Lease is in effect.

#### **Section 7.03 Insurance.**

(a) The City shall procure (or cause to be procured) at the times specified below and maintain (or cause to be maintained) throughout the term hereof for every portion of the Leased Premises insurance against the following risks in the following respective amounts:

(1) Not later than the start of construction of the Project, insurance against loss or damage to the Leased Premises caused by fire and lightning and all other risks covered by an extended coverage endorsement, but excluding earthquake and flood, which insurance, at the election of the City, initially may be in the form of a builder's risk policy providing coverage in an amount not less than the construction costs expended for the Project. The insurance described in this paragraph (1) shall be in an amount equal to the lesser of (A) replacement cost (without deduction for depreciation) of improvements located or to be located on the Leased Premises; or (B) the remaining unpaid principal amount of Bonds Outstanding, plus the amount of use and occupancy coverage described in paragraph (2) below, except that such insurance may be subject to deductible clauses of not to exceed the first one hundred thousand dollars (\$100,000) of the amount of any one loss. Insurance described in this paragraph (1) and in paragraph (2) below may be in the form of a policy which covers the Leased Premises and one or more additional parcels of real

property insured by the City; provided that the amount of coverage available thereunder shall be at least equal to the cumulative replacement values of the Leased Premises and any other such property which is the subject of a lease, installment purchase or other financing arrangement ("Financed Property") for which bonds, certificates of participation or other obligations shall have been issued ("Obligations") plus the amount of use and occupancy coverage required by paragraph (2) below; in the event the City elects to obtain insurance for the Leased Premises and one or more additional parcels of real property and the amount of the insurance proceeds available to pay all claims thereunder is not sufficient to cover the replacement values of all such properties, then any such proceeds shall be used first to rebuild or repair the Leased Premises and all Financed Property or to repay the Bonds and all Obligations.

(2) From the date that the Parking Facility is substantially completed and made available to the City for use by the City, use and occupancy insurance against loss, total or partial, of the use and occupancy of the Leased Premises as a result of any of the hazards covered by the insurance required by paragraph (1) hereof, in an amount sufficient to pay the Base Rental Payments attributable to the Leased Premises for a twenty-four month period; provided, that the amount of such insurance need not exceed the total remaining Base Rental Payments; provided further, that such insurance may be part of a policy permitted under paragraph (1) above, except that such use and occupancy insurance shall not be provided through a self-insurance method or plan of protection; provided further, the City may obtain use and occupancy insurance covering the Leased Premises as well as other parcels of property owned by the City, provided that (i) the cumulative amount thereof is at least equal to the cumulative amount of use and occupancy insurance required by this paragraph (2) with respect to the Leased Premises and any other agreements pursuant to which the City is to maintain such insurance; and [(ii) in the event the City elects to obtain insurance for the Leased Premises and one or more additional parcels of real property and the amount of the insurance proceeds available to pay all claims thereunder is not sufficient to cover the replacement values of all such properties, then any such proceeds shall be used first to rebuild or repair the Leased Premises and all Financed Property or to repay the Bonds and all Obligations.] Any proceeds of such insurance shall be payable to and used by the Trustee as provided in the Indenture to pay principal of and interest on the Bonds for a period of time during which the payment of rental under this Lease is abated. Such insurance may be subject to a deductible clause of not to exceed the amounts permitted by Section 7.02(a)(1) above.

(b) The City shall adjust all moneys which may become due and payable under any policies contemplated by paragraphs (a)(1) and (2) above, may compromise any and all claims thereunder and shall cause the deposit of the Net Proceeds with the Trustee for application as provided herein or in the Indenture. The Trustee shall not be responsible for the sufficiency of any insurance herein required. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the City.

(c) Any insurance policy issued pursuant to paragraph (a)(1) above shall be so written or endorsed as to make losses, if any, payable to the City, the Authority and the Trustee as their respective interests may appear and the Net Proceeds of the insurance required by paragraph (a)(1) above shall be applied as provided in Section 8.01 hereof. The Net Proceeds, if any, of the insurance policy described in paragraph (a)(1) above shall, to the extent that such proceeds are paid on account of loss or damage to the Leased Premises, be payable to the Trustee and deposited in the Insurance and Condemnation Fund and applied as described in the Indenture. The Net Proceeds, if any, of the insurance policy described in paragraph (a)(2) above shall, to the extent that such proceeds relate to the use and occupancy of the Leased Premises, be payable to the Trustee and

deposited in the Revenue Fund. Each insurance policy provided for in this Lease shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Authority and the Trustee without first giving written notice thereof to the Authority and the Trustee at least 60 days in advance of such intended cancellation or modification. If the insurance carrier cannot include this notice provision, the policy shall require the insurance company to so notify the Authority and the Trustee.

(d) The City shall file a certificate with the Trustee not later than nine months following the effective date of the insurance policies each year, commencing in 2017, certifying that the insurance required by this Section is in full force and effect and that the Trustee and the Authority are named as loss payees on each insurance policy which this Lease requires to be so endorsed.

(e) As an alternative to providing the insurance required by (a)(1) of this Section, or any portion thereof, through a commercial insurance policy, 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 shall afford 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 other than the City. Before such self-insurance method or plan may be provided by the City, and annually thereafter on or before April 1 of each year so long as such method or plan is being provided to satisfy the requirements of this Section 7.03(a)(1), the City shall file with the Trustee:

(1) a Written Certificate of the City describing such self-insurance method or plan;

(2) a Written Certificate of an Insurance Consultant stating that, in the opinion of the signer, such self-insurance method or plan is in accordance with the requirements of this Section and, when effective, will afford reasonable coverage for the risks required to be insured against in (a)(1) of this Section; and

(3) a Written Certificate of City stating that, during the time such method or plan is in effect and all of the risks described in (a)(1) of this Section are not covered by policies of insurance, the policies of use and occupancy insurance required by (a)(2) of this Section will remain in effect.

In the event of loss covered by any such self-insurance method or plan, the liability of the City with respect to the damaged portion of the Leased Premises shall be limited to the amounts in the self-insurance reserve fund or funds created under such method or plan.

**Section 7.04 Advances.** In the event the City shall fail to maintain the full insurance coverage required by Section 7.03 hereof or shall fail to keep the Leased Premises in good repair and operating condition, the Authority may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Authority shall become Additional Rental, which amounts the City agrees to pay within 30 days of a written request therefor, together with interest thereon at the maximum rate allowed by law.

**Section 7.05 Title Insurance.** The City covenants and agrees to deliver or cause to be delivered to the Trustee on the Closing Date a CLTA leasehold policy or policies, or a commitment

for such policy or policies, with respect to the Leased Premises with liability in the aggregate amount equal to the principal amount represented by the Series 2017\_\_ Bonds. Such policy or policies, when issued, shall name the Trustee as the insured and shall insure the leasehold estate of the Authority under the Site Lease in the Leased Premises, subject only to Permitted Encumbrances.

**Section 7.06 Leases of City.** In the event all or any portion of the Leased Premises is leased or subleased by the City after the initial recordation of the Lease, the City may require the lessee or sublessee to satisfy the requirements of Sections 7.01, 7.02, 7.03 (exclusive of Subsections (a)(2) and (e)).

## **ARTICLE VIII**

### **DAMAGE, DESTRUCTION, TITLE DEFECT AND CONDEMNATION**

**Section 8.01 Damage, Destruction, Title Defect and Condemnation; Use of Net Proceeds.**

(a) If prior to the termination of the term hereof, (i) the Leased Premises or any improvements in or on the Leased Premises are damaged (each of which is hereinafter called “Damaged Improvements”) by a peril covered by a policy of insurance described in Section 7.03(a)(1) hereof (an “Insured Peril”); or (ii) title to, or the temporary use of, the Leased Premises or any portion thereof or the estate of the City or the Authority in the Leased Premises or any portion thereof is defective or shall be taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority, then the City and the Authority will cause the Net Proceeds of any insurance claim (other than use and occupancy insurance pursuant to Section 7.03(a)(2) hereof which shall be directly transferred to the Trustee for deposit in the Revenue Fund pursuant to Section 7.03(c) hereof) or condemnation award to be transferred to the Trustee for deposit in the Insurance and Condemnation Fund established pursuant to Section 5.05 of the Indenture and applied by the Trustee as follows:

(1) Net Proceeds Exceeding Costs. Within 120 days of the date of said Insured Peril, the City shall obtain a written estimate(s) of the (i) cost of the repair, replacement and reconstruction of the Damaged Improvements (collectively referred to herein as the “Reconstruction”); and (ii) Net Proceeds available to pay such costs. Copies of such estimate(s) shall be made available to the Trustee at the Trustee’s request. If the 120 day period is insufficient to obtain said estimates, the period shall be reasonably extended by the Authorized Representative of the City. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Premises) exceed the estimated costs of Reconstruction, the Damaged Improvements shall be repaired, replaced and reconstructed to the same or better quality as existed before the damage occurred. The City shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage. Any balance of Net Proceeds remaining after the Reconstruction has been completed shall be transferred by the Trustee to the Redemption Fund established under the Indenture and applied, as directed by the City, to redeem Outstanding Bonds in the manner provided by Section 4.01(c) thereof.

(2) Costs Exceeding Net Proceeds. If the estimated costs of Reconstruction exceed the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Premises), the City, in its sole

discretion, may elect to budget and appropriate to the Reconstruction the amount of such excess, whether the same is greater or less than the estimated excess, and to manage the Reconstruction as set forth in Section 8.01(a)(5) hereof. The City shall exercise this election by written notice thereof delivered to the Trustee within 30 days after the City obtains said written estimate(s).

(3) Net Proceeds Sufficient to Redeem All Bonds. If the City does not exercise the election to reconstruct pursuant to Section 8.01(a)(2) hereof and Net Proceeds are at least sufficient to redeem all Outstanding Bonds pursuant to Section 4.01(c) of the Indenture, such Net Proceeds shall be transferred by the Trustee to the Redemption Fund established under the Indenture and used to redeem all Outstanding Bonds in the manner provided by Section 4.01(c) of the Indenture. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Premises) exceed the amount necessary to redeem all Outstanding Bonds, the City shall be entitled to the amount of proceeds remaining after redemption of all Outstanding Bonds (“Excess Proceeds”) and shall have the option (i) to distribute the Excess Proceeds to the Reconstruction and to manage the Reconstruction pursuant to Section 8.01(a)(5) hereof; or (ii) if required by law or if the City so elects, to demolish any remaining improvements on the Leased Premises and remove all debris from the Leased Premises.

(4) Net Proceeds Insufficient to Redeem All Bonds. If the City does not exercise the election to reconstruct pursuant to Section 8.01(a)(2) hereof and Net Proceeds are insufficient to redeem all Outstanding Bonds pursuant to Section 4.01(c) of the Indenture, the City, in its sole discretion, may elect to budget and appropriate funds to cause the redemption of the remaining Outstanding Bonds and the Net Proceeds, together with such funds, shall be transferred to the Trustee with directions to apply the proceeds to the Redemption Fund established under the Indenture to redeem all Outstanding Bonds in the manner provided by Section 4.01(c) of the Indenture; provided, that if the City elects not to appropriate funds for the redemption of the remaining Outstanding Bonds, the City shall apply Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Premises) to the Reconstruction. If the City, in its sole discretion, elects to budget or appropriate funds for the redemption of the remaining Outstanding Bonds, the City shall transfer such funds to the Trustee for deposit in the Redemption Fund established pursuant to the Indenture.

(5) Management of Reconstruction. If the Leased Premises or any part thereof becomes Damaged Improvements, the City shall promptly cause, manage and supervise the Reconstruction. Nothing in this Section 8.01 shall be construed to preclude the City from agreeing to issue a joint contract for, or otherwise cooperating in, the Reconstruction of any of the Damaged Improvements.

(b) The proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Premises shall be applied in accordance with Section 5.05(b) of the Indenture.

## **ARTICLE IX**

### **DISCLAIMER OF WARRANTIES; USE OF THE LEASED PREMISES**

**Section 9.01 Disclaimer of Warranties.** THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS

TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PREMISES, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PREMISES OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PREMISES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the Authority or its assigns be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or the City's use of the Leased Premises as provided hereby.

**Section 9.02 Use of the Leased Premises.** The City will not use, operate or maintain the Leased Premises in violation of any applicable law or in a manner contrary to that contemplated hereby. The City shall provide all permits and licenses, if any, necessary for the use of the Leased Premises. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each portion of the Leased Premises) with all laws of the jurisdictions in which its operations involving any portion of the Leased Premises may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Premises; provided, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the City adversely affect the leasehold estate of the Authority in and to the Leased Premises or its interest or rights hereunder.

## ARTICLE X

### ASSIGNMENT AND INDEMNIFICATION

**Section 10.01 Assignment by Authority.** The parties understand that certain of the rights of the Authority hereunder will be assigned to the Trustee pursuant to the Indenture and accordingly the City agrees to make all payments due hereunder to the Trustee, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach hereof or otherwise) that the City may from time to time have against the Authority. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Authority or the Trustee to protect their interests in the Leased Premises during the term hereof.

**Section 10.02 Assignment by City.** This Lease and the interest of the City in the Leased Premises may not be assigned or encumbered by the City except as permitted by Section 3.04 hereof.

**Section 10.03 Indemnification.** The City shall, to the full extent permitted by law, indemnify, protect, hold harmless, save and keep harmless the Authority and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of or as the result of entering into the Financing Documents, and the acquisition, construction, reconstruction, operation, use, condition, or possession of the Leased Premises and any portion thereof, including:

(a) any accident in connection with the operation, use, condition or possession of the Leased Premises and any portion thereof, resulting in damage to property or injury to or death to



any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the Authority;

(b) patent, trademark or copyright infringement as a consequence of the operation of the Leased Premises and any portion thereof;

(c) strict liability in tort as a consequence of the operation of the Leased Premises and any portion thereof;

(d) any environmental law or regulation as a consequence of the operation of the Leased Premises;

(e) delivery, storage or release of hazardous materials at the Leased Premises or any part thereof, or the contamination of property arising therefrom; and

(f) the Trustee's acceptance or administration of the trusts imposed by the Indenture, including performance of the Trustee's duties, to the extent provided herein.

## **ARTICLE XI**

### **DEFAULT**

#### **Section 11.01 Default.**

(a) The following events shall be "Events of Default" under this Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(1) the City shall fail to deposit with the Trustee any Base Rental Payment required to be so deposited by the close of business on the day such deposit is required pursuant to Section 6.01(a) hereof, provided, that the failure to deposit any Base Rental Payments abated pursuant to Section 6.04 hereof shall not constitute an Event of Default;

(2) subject to the provisions of subsection (c) of this section, the City shall fail to pay any item of Additional Rental when the same shall become due and payable pursuant to Section 6.01(b) hereof; or

(3) the City shall breach any other terms, covenants or conditions contained herein or in the Indenture, and shall (i) fail to remedy any such breach with all reasonable dispatch within a period of 60 days after written notice thereof from the Trustee to the City; or (ii) if the failure stated in the notice cannot be corrected within such period, the City shall fail to institute corrective action within such 60-day period and diligently pursue the same to completion; or

(4) the City's interest herein or any part thereof be assigned, sublet or transferred without the written consent of the Trustee (except as otherwise permitted by Section 3.04(b) hereof), either voluntarily or by operation of law; or

(5) the City or any assignee shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an

insolvent or as a debtor or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the City shall make a general or any assignment for the benefit of its creditors; or

(6) the City shall abandon or vacate the Leased Premises or any portion thereof (except as permitted by Section 3.04 hereof).

(b) Upon the happening of any Event of Default, the Trustee, as assignee of the rights of the Authority pursuant to the Indenture, may exercise those remedies granted to it pursuant to law or hereunder, subject to the terms of this Lease. The Trustee, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Lease in the manner hereinafter provided on account of default by the City. In the event of such termination, the City agrees to pay the Trustee all damages recoverable at law that the Trustee may incur by reason of default by the City. Neither notice to pay rent nor the appointment of a receiver upon initiative of the Trustee to protect the Trustee's interest under this Lease 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 acts of the parties hereto, unless and until the Trustee shall have given written notice to the City of the election on the part of the Trustee to terminate this Lease.

(2) Without terminating this Lease, to collect each installment of rent as it becomes due and enforce any other term or provision hereof to be kept or performed by the City. In the event the Trustee does not elect to terminate this Lease in the manner provided for in subparagraph (1) hereof, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and to pay the rent to the end of the term of this Lease and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration).

Notwithstanding anything to the contrary contained in this Lease, the Trustee shall not have any right to re-enter or re-let the Leased Premises upon an Event of Default.

(c) The Authority expressly waives the right to receive any amount from the City pursuant to Section 1951.2(a)(3) of the California Civil Code.

(d) The City and Authority and its successors and assigns shall honor the exclusive rights of the City hereunder to use the Leased Premises.

(e) Each and all of the remedies given to the Trustee hereunder or by any law now or hereafter enacted are cumulative, and the single or partial exercise of any right, power, or privilege hereunder shall not impair the right of the Trustee to other or further exercise thereof or the exercise of any or all other rights, powers, or privileges. If the City Charter, any statute or rule of law shall limit the remedies given to the Trustee hereunder, the Trustee nevertheless shall be entitled to whatever remedies are allowable under the City Charter, any statute or rule of law, except those specifically waived herein. All rights, remedies and powers provided by Section 11.01 may be

exercised only to the extent that the exercise thereof does not violate any applicable provision of the City Charter or law, and all of the provisions of this Section 11.01 are intended to be subject to all applicable mandatory provisions of the City Charter and law which may be controlling and to be limited to the extent necessary so that they will not render this Lease or the provisions hereof invalid or unenforceable under the provisions of the City Charter and any applicable law.

(f) Notwithstanding any other provision of this Lease or the Indenture, in no event shall the Trustee have the right to accelerate the payment of any Base Rental Payment hereunder and, without limiting the generality of the foregoing, the Trustee specifically waives its rights under Section 1951.2 of the California Civil Code to accelerate payment of any Base Rental Payment in the event of default by the City.

(g) In the event the Trustee shall prevail in any action brought to enforce any of the terms and provisions of this Lease, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Trustee in attempting to enforce any of the remedies available to the Trustee hereunder.

(h) All damages and other payments received by the Trustee pursuant to this Section 11.01 shall be applied in the manner set forth in Section 7.03 of the Indenture.

**Section 11.02 Waiver.** Failure of the Trustee to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice that may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Trustee to insist upon performance by the City of any term, covenant, or condition hereof, or to exercise any rights given the Trustee on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rental payments hereunder shall not be, or be construed to be, a waiver of any term, covenant, or condition of this Lease.

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 12.01 Notices.** All notices, requests, demands and other communications under this Lease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or if mailed by first class registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to the Authority:

Public Facilities Financing Authority of the City of San Diego  
c/o City of San Diego  
Office of the City Clerk  
202 C Street, 2<sup>nd</sup> Floor  
San Diego, California 92101  
Phone: (619) 553-400020  
Fax: (619) 553-4045

Copy to:

City Attorney's Office  
1200 Third Avenue  
San Diego, California 92101  
Attention: Deputy City Attorney – Finance  
Phone: (619) 236-6220  
Fax: (619) 236-7215

If to the City:

City of San Diego  
Department of Finance  
202 C Street, 9<sup>th</sup> Floor  
San Diego, California 92101  
Attention: Chief Financial Officer  
Phone: (619) 236-5941  
Fax: (619) 236-6606

If to the Trustee:

Wilmington Trust, N. A.  
650 Town Center Drive, Suite 600  
Costa Mesa, California 92626-7121  
Attention: Corporate Trust Department  
Phone: (714) 384-4152  
Fax: (714) 384-4151

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 12.01.

**Section 12.02 Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.

**Section 12.03 Third Party Beneficiaries.** The Trustee is hereby designated as a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to the Trustee under the Indenture and for the purpose of the Trustee enforcing its own rights.

**Section 12.04 Net Lease.** This Lease is a triple net lease. It is the purpose and intent of the Authority and the City that lease payments hereunder shall be absolutely net to the Authority so that this Lease shall yield to the Authority the lease payments, free of any charges, assessments or impositions of any kind charged, assessed or imposed on or against the Leased Premises, and without counterclaim, deduction, defense, deferment or set-off by the City except as herein specifically otherwise provided. The Authority shall not be expected or required to pay any such charge, assessment or imposition, or be under any obligation or liability hereunder except as herein expressly set forth, and all costs, expenses and obligations of any kind relating to the maintenance and operation of the Leased Premises which may arise or become due during the term of this Lease shall be paid by the City.

### **Section 12.05 Amendments to the Lease.**

(a) This Lease may be amended in writing as may be mutually agreed by the Authority and the City, subject to the written approval of the Trustee; provided, however, that no such amendment which materially adversely affects the rights of the Owners shall be effective unless it shall have been consented to by the Owners of more than 50% in principal amount of the affected Bonds Outstanding; and provided further that no such amendment shall (i) extend the payment date of any Base Rental Payment, or reduce the interest, principal or prepayment premium component of any Base Rental Payment (except a reduction to reflect prepayment or defeasance of any Bonds pursuant to Article X of the Indenture, so long as the remaining Base Rental Payments are at least sufficient to pay Debt Service on Outstanding Bonds), without the prior written consent of the Owner of each Series of Bonds so affected; or (ii) reduce the percentage of the value of the Bonds Outstanding, the consent of the Owners of which is required for the execution of any amendment hereof.

(b) Without complying with the provisions of paragraph (a) above, this Lease and the rights and obligations of the Authority and the City hereunder may be amended or supplemented at any time by an amendment hereof or supplement hereto which shall become binding upon execution without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the agreements, conditions, covenants and terms required by the Authority or the City to be observed or performed herein and other agreements, conditions, covenants and terms thereafter to be observed or performed by the Authority or the City, or to surrender any right or power reserved herein to or conferred herein on the Authority or the City, and which in either case shall not, in the judgment of the Trustee, materially adversely affect the interests of the Owners;

(2) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the Authority or the City may deem desirable or necessary and not inconsistent herewith, and which shall not, in the judgment of the Trustee, materially adversely affect the interests of the Owners;

(3) to effect a Substitution, Addition or Removal in accordance with Section 3.06 hereof; and

(4) to facilitate the issuance of Additional Bonds;

(5) after prepayment or defeasance of any Bond, to revise Base Rental Payment Schedule to be sufficient to pay Debt Service on Bonds then Outstanding; and

(6) to make any other addition, amendment or deletion which does not, in the judgment of the Trustee, materially adversely affect the interests of the Owners.

**Section 12.06 Discharge of City.** Upon the payment to the Owners of all Outstanding Bonds in accordance with Article X of the Indenture, all of the obligations of the City hereunder shall thereupon cease, terminate and become void and shall be discharged and satisfied.

**Section 12.07 Partial Invalidity.** If any one or more of the agreements, conditions, covenants or terms hereof shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining agreements, conditions, covenants or terms hereof shall be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Lease shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Trustee or by the City, or if for any reason it is held by such a court that any of the covenants and agreements of the City hereunder, including the covenant to pay Base Rental Payments hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the City to possess, occupy and use the Leased Premises, which right in such event is hereby granted, this Lease shall thereupon become and shall be deemed to be a lease under which the Base Rental Payments due in any fiscal year of the City are subject to annual appropriation and are to be paid by the City annually in consideration of the right of the City to possess, occupy, and use the Leased Premises, and all of the rental and other terms, provisions, and conditions of this Lease, except to the extent that such terms, provisions, and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

**Section 12.08 California Law.** This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of California.

**Section 12.09 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 hereof.

**Section 12.10 Execution in Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. It is also agreed that the Authority and City may each execute separate counterparts of this Lease, all with the same force and effect as though both had executed the same counterpart

**Section 12.11 Excess Payments.** Notwithstanding anything contained herein or in the Indenture to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the City or the Trustee receives payments, proceeds or awards with respect to the Leased Premises in excess of the amount necessary to pay, or prepay, or provide in accordance with the Indenture, for the payment or prepayment of all of the Outstanding Bonds and all other amounts due hereunder and under the Indenture, such excess shall all be paid to the City.

**Section 12.12 Further Assurances and Corrective Instruments.** The City and the Authority 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 Premises leased hereby or intended to be so leased or for carrying out the express intention of this Lease.

**Section 12.13 Concerning the Trustee.** Pursuant to the Indenture, the Authority will assign its rights under this Lease and the Site Lease to the Trustee, solely in its capacity as Trustee under the Indenture. As assignee of the rights of the Authority, the Trustee shall have the protections, indemnities and limitations from liability afforded to the Trustee under the Indenture.

Nothing contained herein shall be construed as creating any liability on the Trustee to perform any covenant, duty or obligation of any kind contained in this Lease or in the Site Lease and under no circumstances shall the Trustee be liable for the payment of any fees, costs, indebtedness or expenses related to or arising from this Lease or from the Site Lease or any documents related hereto except from amounts held under the Indenture and available for such use.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Lease by their officers thereunto duly authorized as of the day and year first written above.

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, General Counsel

By: \_\_\_\_\_  
Deputy General Counsel

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Authorized Signatory

ATTEST:

By: \_\_\_\_\_  
Elizabeth Maland, City Clerk

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney



STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF SAN DIEGO                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF SAN DIEGO                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Affix seal here]

**EXHIBIT A**  
**DESCRIPTION OF SITE**

EXHIBIT 'A'

APN: 534-450-08

All that portion of Pueblo Lot 1136 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the Miscellaneous Map thereof No. 36, filed in the Office of the County Recorder of said San Diego County on November 14, 1921, being more particularly described as follows:

**Beginning** at horizontal control point SDGPS 3135, said point being a set lead and tag stamped 'City Engr' per Record of Survey No. 14492, filed in the said Office of the County Recorder on March 31, 1994; Thence leaving said horizontal control point SDGPS 3135 North 04°33'55" West 1751.02 feet to the **True Point of Beginning**; Thence North 39°58'11" East 480.24 feet; Thence South 50°01'48" East 170.33 feet; Thence South 39°59'13" West 16.99 feet; Thence South 50°01'36" East 22.76 feet; Thence South 39°50'55" West 471.33 feet; Thence North 50°12'02" West 142.84 feet; Thence North 39°56'37" East 8.50 feet; Thence North 50°01'37" West 51.24 feet to the **True Point of Beginning**.

The above described parcel contains 93,751.87 square feet, 2.1522 acre.

Said bearings are based on the California Coordinate System NAD 83 (Epoch 1991.35) Zone 6. Distances shown hereon are grid. To obtain a ground distance, divide the grid distance by 1.0000064.

*Richard T. McCormick* 10-10-2016  
Richard T. McCormick, LS 7450  
Senior Land Surveyor, Field Engineering  
City of San Diego  
My Registration Expires 12/31/2016

File: Balboa Park Parking.doc  
I/O 22000118 October 2016



**EXHIBIT B**

**BASE RENTAL PAYMENT SCHEDULE**

<i>Payment Date</i>	<i>Amount</i>	<i>Payment Date</i>	<i>Amount</i>
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**INDENTURE**

by and between

**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO**

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

as Trustee

\_\_\_\_\_  
Dated as of [DATE] 1, 2017  
\_\_\_\_\_

Relating to

**\$(AMOUNT)  
PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE BONDS, SERIES 2017\_\_  
(BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS)**

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## **INDENTURE**

This INDENTURE, dated as of [DATE] 1, 2017 (the “Indenture”), is entered into by and between the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO, a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California (the “Authority”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association existing under and by virtue of the laws of the United States of America, as trustee (the “Trustee”). (Capitalized terms used in the Whereas clauses that are not defined therein have the meanings provided in Section 1.01 hereof.)

### **WITNESSETH:**

WHEREAS, the Authority is a joint powers authority duly organized and existing under and pursuant to that certain Amended and Restated Joint Exercise of Powers Agreement, dated as of January 1, 2013 (the “JPA Agreement”), by and between the City of San Diego (the “City”) and the Successor Agency to the Redevelopment Agency of the City of San Diego and the Housing Authority of the City of San Diego, and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the “Act”); and

WHEREAS, the Authority is authorized pursuant to Article 4 of the Act to borrow money to provide financing and refinancing for public capital improvements of public entities, including the Members; and

WHEREAS, the City has determined it is in the public interest and will benefit the inhabitants of the City to finance a portion of the costs of the acquisition, construction, installation and equipping of a parking facility, including a rooftop park thereon (the “Parking Facility”), together with a bypass bridge, a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and certain capital improvements related to the Parking Facility and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City’s capital improvement program (such capital improvements, together with the Parking Facility, are collectively referred to as the “Project”), and in order to provide funds for the Project, the City has requested the Authority to issue its Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements) (the “Series 2017\_\_ Bonds”) in the aggregate principal amount of \$[AMOUNT] pursuant to this Indenture; and

WHEREAS, in order to provide for the repayment of the Series 2017\_\_ Bonds, the City will lease to the Authority certain real property of the City (the “Site”) on which the Parking Facility will be constructed pursuant to the Site Lease, dated as of [DATE] 1, 2017 (the “Site Lease”) by and between the City and the Authority, and the Authority will lease to the City and the City will lease from the Authority the Site and the Parking Facility (together, the “Leased Premises”) pursuant to the Facilities Lease, dated as of [DATE] 1, 2017 (the “Lease”), under which the City will be required to make base rental payments to the Authority which, together with amounts on deposit in the Capitalized Interest Fund herein will be calculated to be sufficient to enable the Authority to pay the principal of and interest and premium (if any) on Series 2017\_\_ Bonds when due and payable; and

WHEREAS, in order to provide for the authentication and delivery of the Series 2017\_\_ Bonds and any Series of Additional Bonds to be issued hereunder, to establish and declare the terms

and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority and authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the Indenture have been in all respects duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of the principal of, premium, if any, and interest on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable consideration, the receipt of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Bonds, as follows:

## **ARTICLE I**

### **DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY**

**Section 1.01 Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes of this Indenture, of any Supplemental Indenture, of the Lease, of the Bonds and of any certificate, opinion, request or other documents herein mentioned, have the meanings herein specified. All other capitalized terms used herein without definition shall have the meaning given to such terms in the Lease.

“Additional Bonds” means all bonds of the Authority authorized by and at any time Outstanding pursuant hereto and executed, issued and delivered in accordance with Section 2.11 and 2.12 hereof.

“Authority” means the Public Facilities Financing Authority of the City of San Diego, a joint powers agency created by the City, the Successor Agency to the Redevelopment Agency of the City of San Diego and the Housing Authority of the City of San Diego pursuant to California Government Code Sections 6500 *et seq.* and the Third Amended and Restated Joint Exercise of Power Agreement, dated January 1, 2013, and any successor thereto.

“Authorized Representative” means: (a) with respect to the Authority, its Chair, Vice Chair, Treasurer or Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chair, and filed with the City and the Trustee; and (b) with respect to the City, its Chief Operating Officer, its Chief Financial Officer or its Mayor, or any other person duly designated by its Chief Operating Officer, its Chief Financial Officer or its Mayor as an Authorized Representative of the City by a written certificate of the Chief Operating Officer, its Chief Financial Officer or the Mayor filed with the City and the Trustee.

“Bond Counsel” means (a) Stradling Yocca Carlson & Rauth, a Professional Corporation, or (b) any other firm of attorneys, designated by the City, of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America. Any Opinion of Bond Counsel may be based, insofar as it relates to factual matters, upon information that is in the possession of the City or the Trustee, as applicable, upon a certificate or opinion of, or representation by, an officer or officers of the City, the Trustee or the Authority, unless such Counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which their opinion may be based, is erroneous.

“Base Rental Payments” means the aggregate amount of all the payments required to be paid by the City pursuant to Section 6.01(a) of the Lease.

“Bond Year” means each twelve-month period extending from \_\_\_\_\_ 16 in one calendar year to \_\_\_\_\_ 15 of the succeeding calendar year, both dates inclusive; provided that the first Bond Year with respect to the Series 2017\_\_ Bonds shall commence on the Closing Date and end on \_\_\_\_\_ 15, 2017.

“Bonds” means the Series 2017\_\_ Bonds and any Additional Bonds, authorized by and at any time Outstanding pursuant to the Indenture.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in San Diego, California or New York, New York are authorized or required by law to close, or (iii) a day upon which the Trustee is authorized by law to remain closed.

“Capitalized Interest Fund” means the fund by that name established by Section 5.03 hereof.

“Certificate of Completion” means a Certificate of the City filed with the Trustee stating that the Project, which was financed with the proceeds of the Series 2017\_\_ Bonds deposited into the Construction Fund, has been acquired, constructed, installed and improved and that all Construction Costs have been paid or provided for.

“City” means the City of San Diego, a municipal corporation organized and existing under and by virtue of its charter and the laws of the State.

“Closing Date” means the date of delivery of the Series 2017\_\_ Bonds to the original purchaser thereof.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or, where pertinent, its statutory predecessor, the Internal Revenue Code of 1954, as amended (the “1954 Code”). References to the Code and Sections of the Code include relevant applicable regulations and proposed regulations thereunder and under the 1945 Code, as amended from time to time, and any successor provision to those Sections, regulations or proposed regulations and, in addition, all revenue rulings, announcements, notices, procedures and judicial determinations under the foregoing applicable to the Bonds.

“Construction Costs” means all costs of acquiring, constructing, installing or improving the Project, including but not limited to:

(i) all costs which the Authority or the City shall be required to pay to a manufacturer, vendor or contractor or any other person under the terms of any contract or contracts for the acquisition, construction, installation or improvement of the Project;

(ii) obligations of the Authority or the City incurred for labor and materials (including obligations payable by the Authority or the City for actual out of pocket expenses of the Authority or the City) in connection with the acquisition, construction, installation or improvement of the Project, including reimbursement to the Authority or the City for all advances and payments made in connection with the Project prior to or after delivery of the Series 2017\_\_ Bonds;

(iii) the costs of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect during the course of acquisition, construction, installation or improvement of the Project;

(iv) all costs of planning, development, design, engineering and architectural services, including the actual out of pocket costs of the Authority or the City for environmental approvals, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees and sales commissions, and for supervising the environmental approval, planning and inspection process and the acquisition, construction, installation and improvement of the Project, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction, installation or improvement of the Project; and

(v) any sums required to reimburse the Authority or the City for advances made by the Authority or the City for any of the above items or for any other costs incurred and for work done by the Authority or the City which are properly chargeable to the acquisition, construction, installation or improvement of the Project.

“Construction Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.03 hereof.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate relating to the Series 2017\_\_ Bonds, executed by the City and dated the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means all expenses directly or indirectly incurred in connection with the authorization, execution and delivery of the Site Lease, the Lease and the Indenture (including any supplements or amendments) and the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority or the City, initial fees and expenses of the Trustee (including but not limited to fees and expenses for legal counsel), compensation to any financial consultants or underwriters, legal fees and expenses, appraisal fees, title insurance premiums, filing and recording costs, rating agency fees, costs of preparation, reproduction and publication of documents, out-of-pocket expenses of the Authority or the City, Authority and City staff costs and costs of printing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.02.

“Debt Service” means, during any period of computation, the amount obtained for such period by totaling the following amounts: (a) the principal amount of all Outstanding Bonds coming due and payable by their terms in such period; and (b) the interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

“Defeasance Obligations” means (a) Federal Securities and Federal Certificates which are fixed rate and not callable for redemption prior to their maturity by any person other than the owner thereof and (b) other Permitted Investments (i) which either are not callable for redemption prior to their maturities by any person other than the owner thereof or for which an option to redeem prior to maturity has previously been irrevocably exercised (or an irrevocable covenant to exercise such option has previously been made by the person entitled to exercise such option) and the redemption date of such securities has thereby been irrevocably fixed prior to the use of any such securities as Defeasance Obligations, and (ii) which are rated, at the time of their initial deposit with the Trustee as Defeasance Obligations, by S&P and Moody’s in their highest Rating Category.

“Event of Default,” with respect to this Indenture, means any of the events specified in Section 11.01 and, with respect to the Lease, means any of the events specified in Section 11.1 of the Lease.

“Federal Certificates” means evidences of indebtedness or ownership of proportionate interests in future principal and interest payments of Federal Securities, including depository receipts thereof, wherein (i) a bank or trust company acts as custodian and holds the underlying Federal Securities; (ii) the owner of the Federal Certificate is a real party in interest with the right to proceed directly and individually against the obligor of the underlying Federal Securities; and (iii) the underlying Federal Securities are held in trust in a special account, segregated from the custodian’s general assets, and are not available to satisfy any claim of the custodian or any person claiming through the custodian, or any person to whom the custodian may be obligated.

“Federal Securities” means: direct 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) or evidence of ownership in a portion thereof (which may consist of specified portions of interest thereon and obligations of the Resolution Funding Corporation which constitute interest strips) if held by a custodian on behalf of the Trustee; obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; and prerefunded municipal obligations rated, at the time of purchase, by Moody’s and S&P in their highest Rating Category; provided that “structured securities” (including flip notes, range notes, inverse floaters and step-ups) will not be considered Federal Securities; provided further that floaters (based on single, interest rate based indices) and callable securities of the above-enumerated agencies may be treated as Federal Securities.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority or the City, as applicable, as its official fiscal year period.

“Fitch” means Fitch Ratings, New York, New York, or its successors, and if such organization shall for any reason no longer perform the functions of a securities rating agency,

“Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

“Indenture” means this Indenture as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

“Independent Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State or a comparable successor, appointed and paid by the City, and who, or each of whom:

(a) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the Authority or the City;

(b) does not have a substantial financial interest, direct or indirect, in the operations of the Authority or the City; and

(c) is not connected with the Authority or the City as a member, officer or employee of the Authority or the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the Authority or the City.

“Insurance and Condemnation Fund” means the fund by that name established and held by the Trustee pursuant to Section 5.05.

“Interest Account” means the account by that name established in the Revenue Fund pursuant to Section 5.02.

“Interest Payment Date” means for the Series 2017\_\_ Bonds each \_\_\_\_\_ 15 and \_\_\_\_\_ 15, commencing \_\_\_\_\_ 15, 2017, and for any series of Additional Bonds, such dates as shall be specified in the Supplemental Indenture authorizing such Additional Bonds.

“Lease” means that certain Facilities Lease, dated as of [DATE] 1, 2017, by and between the Authority, as lessor, and the City, as lessee, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

“Leased Premises” means that certain real property and improvements that are leased by the Authority to the City pursuant to the Lease, as modified pursuant to the Lease from time to time.

“Moody’s” means Moody’s Investors Service, New York, New York, or its successors, and if such organization shall for any reason no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

“Net Proceeds” means amounts derived by the City from any policy of casualty insurance with respect to any portion of the Leased Premises, or the proceeds of any taking of the Leased Premises 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.

“Office” means, with respect to the Trustee, the designated corporate trust office of the Trustee which is initially located in Costa Mesa, California, except that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate agency business shall be conducted.

“Original Purchaser” means the original purchaser(s) of the Series 2017\_\_ Bonds upon their delivery by the Trustee on the Closing Date.

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of Article X) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Sections 10.01 and 10.02, including Bonds (or portions thereof) described in Article X; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

“Owner,” whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

“Parking Facility” means that certain parking facility to be constructed on the Site, including a rooftop park thereon, and all additions, betterments, extensions and improvements thereto.

“Participating Underwriter” shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

- (i) Federal Securities or Federal Certificates;
- (ii) The following listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:
  - (a) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
  - (b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes
  - (c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations
  - (d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

(iii) Obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing, that are rated, at the time of purchase, in the highest Rating Category by two Rating Agencies;

(iv) United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank. Investments under this subdivision shall be rated “AA” or better by a Rating Agency;

(v) Bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are rated, at the time of purchase, by “A1/P1/F1” by two Rating Agencies or, if the term of such indebtedness is longer than one year, rated in the highest Rating Category by two Rating Agencies;

(vi) Taxable commercial paper or tax-exempt commercial paper with a maturity of not more than 270 days, which are rated, at the time of purchase, “A1/P1/F1” by two Rating Agencies;

(vii) Deposit accounts or certificates of deposit, whether negotiable or non-negotiable, issued by a state or national bank (including the Trustee) or a state or federal savings and loan association or a state-licensed branch of a foreign bank; provided, however, that such certificates of deposit or deposit accounts shall be either (a) continuously insured by the Federal Deposit Insurance Corporation; or (b) have maturities of not more than 365 days (including certificates of deposit) and are issued by any state or national bank or a state or federal savings and loan association, the short-term obligations of which are rated, at the time of purchase, in the highest short term rating by two Rating Agencies ;

(viii) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which bank has short-term obligations outstanding which are rated, at the time of purchase, by two Rating Agencies in the highest short-term Rating Category, and which bankers acceptances mature not later than 365 days from the date of purchase;

(ix) Any repurchase agreement: (a) with (i) any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee), or a state-licensed branch of a foreign bank, having a minimum permanent capital of one hundred million dollars (\$100,000,000) and having short-term debt which is rated, at the time of the purchase, by two Rating Agencies in one of the three highest short-term Rating Categories; or (ii) any government bond dealer reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York; and (b) which agreement is secured by any one or more of the securities and obligations described in clause (i) or (ii) of this definition and having maturities equal to or less than 5 years from the date of delivery, which shall have a market value (valued at least monthly) not less than 102% of the principal amount of such investment and shall be placed with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement. The entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to the Trustee that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to 102% the principal amount of such repurchase agreement, and the Trustee shall be entitled to rely on each such undertaking;



(x) Any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii) and (ix) of this definition and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii) (iii) and (ix) of this definition and which money market fund is rated, at the time of purchase, by at least one Rating Agency in the highest Rating Category;

(xi) Any guaranteed investment contract, including forward delivery agreements (“FDAs”) and forward purchase agreements (“FPAs”), with a financial institution or insurance company which has (or which is unconditionally guaranteed by a legal entity which has), at the date of execution thereof, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims-paying ability which is rated, at the time of purchase, by two Rating Agencies in one of two highest long-term Rating Categories. Only Permitted Investments described in clause (i) and (ii) above and having maturities equal to or less than 30 years from their date of delivery will be considered eligible for any collateralization/delivery purposes for guaranteed investment contracts, FDAs or FPAs;

(xii) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or of any political subdivision or public agency thereof which are rated, at the time of purchase, by two Rating Agencies in the highest short-term Rating Category or within one of the three highest long-term Rating Categories, but excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date;

(xiii) For amounts less than \$250,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank, or a state or federal savings and loan association in the State, fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof;

(xiv) Investments in taxable money market funds or portfolios restricted to obligations with an average maturity of one year or less and which funds or portfolios are: (a) rated, at the time of purchase, by two Rating Agencies in one of the two highest Rating Categories; or (b) have or are portfolios guaranteed as to payment of principal and interest by the full faith and credit of the United States of America;

(xv) Investments in the City’s pooled investment fund;

(xvi) Shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xiii) of this definition and which companies are: (a) rated, at the time of purchase, by two Rating Agencies in the highest Rating Category; or (b) have an investment advisor registered with the Securities and Exchange Commission with not less than five years’ experience investing in such securities and obligations and with assets under management in excess of five hundred million dollars (\$500,000,000);

(xvii) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which consists exclusively of investments permitted by Section 53601 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended; and

(xviii) Any other investment, with confirmation (or other action, satisfactory to the City) from each rating agency that has a current rating on the Bonds at the time of initial purchase thereof, that its rating on the Bonds will not be lowered or withdrawn as a result of such investment.

“Principal Account” means the account by that name established in the Revenue Fund pursuant to Section 5.02.

“Project” means the Parking Facility and certain capital improvements related to the Parking Facility, including a bypass bridge and a road to divert vehicular traffic away from the pedestrian core of Balboa Park, and, in the event that the Parking Facility is not constructed or proceeds remain after the completion of construction, the costs of other eligible General Fund capital improvements in the City’s capital improvement program as designated in a written certificate of an Authorized Representative of the City.

“Rating Agency” means Moody’s, S&P or Fitch, or any other nationally recognized statistical rating organization.

“Rating Category” means one of the generic categories of rating by a Rating Agency applicable to a Permitted Investment, without regard to any refinement or graduation of such rating category by a plus or minus sign or a numeral.

“Record Date” means, with respect to any Interest Payment Date, the last calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established pursuant to Section 5.04.

“Registration Books” means the records maintained by the Trustee pursuant to Section 2.06 for the registration and transfer of ownership of the Bonds.

“Revenue Fund” means the fund by that name established and held by the Trustee pursuant to Section 5.01 and all accounts and funds therein.

“Revenues” means (a) all Base Rental Payments, prepayments, insurance proceeds and condemnation proceeds with respect to the Leased Premises and (b) the Revenue Fund and all interest and other income deposited, pursuant to Section 5.01, in the Revenue Fund.

“Securities Depositories” means The Depository Trust Company, 55 Water Street, 50th Floor, New York, NY 10041-0099, Attention: Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a Written Certificate of the City delivered to the Trustee.

“Series,” or “series” whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

“Series 2017\_\_ Bonds” means the Authority’s Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements).

“Series 2017\_\_ Bonds Sinking Account” means the account of that name established by the Trustee pursuant to Section 3.04 hereof.

“Site” means the real property more particularly described in Exhibit A to the Site Lease and in Exhibit A to the Lease, as amended from time to time.

“Site Lease” means the Site Lease, dated as of [DATE] 1, 2017, by and between the City, as lessor, and the Authority, as lessee, together with any duly authorized and executed amendments thereto.

“Standard & Poor’s” or “S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business or its successors and if such organization shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City.

“State” means the State of California.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Certificate” means the Tax Certificate of the Authority and City, dated the Closing Date, with respect to tax matters relating to the Series 2017\_\_ Bonds.

“Term Bonds” means the Series 2017\_\_ Bonds maturing on \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, inclusive, \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, inclusive, \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.

“Trustee” means Wilmington Trust, National Association, a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee hereunder as provided in Section 8.01.

“Written Certificate,” “Certificate,” “Written Request,” “Request” and “Written Requisition” of the Authority or the City mean, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

**Section 1.02 Rules of Construction.** All references in the Indenture to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of the Indenture; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to the Indenture as a whole and not to any particular Article, Section or subdivision hereof.

**Section 1.03 Authorization and Purpose of Series 2017\_\_ Bonds.** The Authority has reviewed all proceedings heretofore taken relative to the authorization of the Series 2017\_\_ Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions, and acts required by law to exist, happen and/or be performed precedent to and in the issuance of the Series 2017\_\_ Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized under each and every requirement of

law, to issue the Series 2017\_\_ Bonds in the manner and form provided in this Indenture. Accordingly, the Authority hereby authorizes the issuance of the Series 2017\_\_ Bonds pursuant to this Indenture for the purposes described herein.

**Section 1.04 Equal Security.** In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

**Section 1.05 Timing of Actions.** Whenever in this Indenture there is designated a time of day at or by which a certain action must be taken, such time shall be local time in San Diego, California, except as otherwise specifically provided herein. If the date for making any payment or the last day for the performance of any act or the exercise of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture, except as otherwise specifically provided herein. Notwithstanding the foregoing, if an Interest Payment Date for the Bonds falls on a day which is not a Business Day, then amounts due with respect to the Outstanding Bonds on such Interest Payment Date shall be paid on the next succeeding Business Day but interest shall accrue only to such Interest Payment Date.

**Section 1.06 Content of Certificates.** Every Written Certificate, Certificate, Written Request, Request and Written Requisition of the Authority with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any certificate of the Authority or the City may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters information with respect to which is in the possession of the Authority or the City, upon a representation by an officer or officers of the Authority or the City unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

**Section 1.07 Actions by Authority and City.** Except as otherwise expressly provided herein, for all purposes of the Indenture the Authorized Representative of the Authority shall be

authorized to act upon behalf of the Authority, and the Authorized Representative of the City shall be authorized to act upon behalf of the City.

## **ARTICLE II**

### **ISSUANCE OF BONDS**

**Section 2.01 Authorization of Series 2017\_\_ Bonds.** The Authority hereby authorizes the issuance of the Series 2017\_\_ Bonds, which shall constitute special obligations of the Authority, for the purpose of providing funds: to finance the Project, make a deposit to the Capitalized Interest Fund and to pay Costs of Issuance related thereto.

The Series 2017\_\_ Bonds are hereby designated the “Public Facilities Financing Authority of the City of San Diego, Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements).” The aggregate principal amount of Series 2017\_\_ Bonds initially issued and Outstanding under this Indenture shall equal \$[AMOUNT]. At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver the Series 2017\_\_ Bonds. This Indenture constitutes a continuing agreement with the Trustee and the Owners from time to time of the Series 2017\_\_ Bonds to secure the full payment of the principal of and interest and premium (if any) on all the Series 2017\_\_ Bonds, subject to the covenants, provisions and conditions contained in this Indenture.

**Section 2.02 Terms of the Series 2017\_\_ Bonds.** The Series 2017\_\_ Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Series 2017\_\_ Bond shall have more than one maturity date. The Series 2017\_\_ Bonds shall mature on the dates and in each of the years and in the amounts, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

*Maturity Date*

*Principal Amount*

*Interest Rate*

**Section 2.03 Additional Terms of the Series 2017\_\_ Bonds.** Except as otherwise provided in Section 2.07 hereof, interest on the Series 2017\_\_ Bonds shall be payable semiannually on each Interest Payment Date, to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed on such Interest Payment Date by first class mail to the Owners at the respective addresses of such Owners as they appear on the Registration Books; provided however, that payment of interest may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Series 2017\_\_ Bonds in the aggregate principal amount of \$1,000,000 or more who shall furnish written wire instructions to the Trustee at least five (5) days before the applicable Record Date. Principal of any Series 2017\_\_ Bond and any premium upon redemption shall be paid by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee, except as provided in Section 2.07 hereof. Principal of and interest and premium (if any) on the Series 2017\_\_ Bonds shall be payable in lawful money of the United States of America.

Each Series 2017\_\_ Bond shall be dated as of the Closing Date and shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which

event it shall bear interest from such Interest Payment Date, or (b) unless it is authenticated on or before \_\_\_\_\_, 2017, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Series 2017\_\_ Bond, interest thereon is in default, such Series 2017\_\_ Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

**Section 2.04 Transfer and Exchange of Bonds.** Any Bond may, in accordance with its terms, be transferred on the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Transfer of any Bond shall not be permitted by the Trustee during the period established by the Trustee for selection of Bonds for redemption or if such Bond has been selected for redemption pursuant to Article IV. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and shall deliver a new Bond or Bonds for a like aggregate principal amount and of like maturity. The Trustee may require the Bond Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Authority. Any Bond may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of like maturity. Exchange of any Bond shall not be permitted during the period established by the Trustee for selection of Bonds for redemption or if such Bond has been selected for redemption pursuant to Article IV. The Trustee may require the Bond Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Authority.

**Section 2.05 Book-Entry System.** Notwithstanding any provision of this Indenture to the contrary:

(a) The Bonds shall be initially issued and registered in the name of “Cede & Co.,” as nominee of The Depository Trust Company, and shall be evidenced by one certificate maturing on each of the maturity dates set forth in Section 2.02 and Section 2.04 hereof to be in a denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except:

(i) to any successor of The Depository Trust Company or its nominee, or of any substitute depository designated pursuant to paragraph (ii) of this subsection (a) (“substitute depository”); provided that any successor of The Depository Trust Company or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) to any substitute depository designated in a written request of the Authority, upon (A) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository or (B) a determination by the Authority that The Depository Trust Company or its successor is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) to any person as provided below, upon (A) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository or (B) a determination by the Authority that The Depository Trust Company or its successor is no longer able to carry out its functions as depository; provided that no substitute depository which is not objected to by the Authority and the Trustee can be obtained.

(b) In the case of any transfer pursuant to paragraph (i) or paragraph (ii) of subsection (a) of this Section 2.07, upon receipt of all Outstanding Bonds by the Trustee, together with a written request of an Authorized Representative of the Authority to the Trustee, a single new Bond shall be issued, authenticated and delivered for each maturity of such Bond then outstanding, registered in the name of such successor or such substitute depository or their nominees, as the case may be, all as specified in such written request of an Authorized Representative of the Authority. In the case of any transfer pursuant to paragraph (iii) of subsection (a) of this Section 2.07, upon receipt of all Outstanding Bonds by the Trustee together with a written request of an Authorized Representative of the Authority, new Bonds shall be issued, authenticated and delivered in such denominations and registered in the names of such persons as are requested in a written request of the Authority provided the Trustee shall not be required to deliver such new Bonds within a period less than sixty (60) days from the date of receipt of such a written request of an Authorized Representative of the Authority.

(c) In the case of partial redemption or an advance refunding of any Bonds evidencing all of the principal maturing in a particular year, The Depository Trust Company shall, at the Authority's expense, deliver the Bonds to the Trustee for cancellation and re-registration to reflect the amounts of such reduction in principal.

(d) The Authority and the Trustee shall be entitled to treat the person in whose name any Bond is registered as the absolute Owner thereof for all purposes of this Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Authority; and the Authority and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying or otherwise dealing with any beneficial owners of the Bonds. Neither the Authority nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or substitute depository or its successor), except for the registered owner of any Bond.

(e) So long as all outstanding Bonds are registered in the name of Cede & Co. or its registered assign, the Authority and the Trustee shall reasonably cooperate with Cede & Co., as sole registered Owner, or its registered assign in effecting payment of the principal and redemption premium, if any, and interest due with respect to the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

(f) So long as all Outstanding Bonds are registered in the name of Cede & Co. or its registered assigns (hereinafter, for purposes of this paragraph (f), the "Owner"):

(i) All notices and payments addressed to the Owners shall contain the Bonds' CUSIP number.



(ii) Notices to the Owner shall be forwarded in the manner set forth in the form of blanket issuer letter of representations (prepared by The Depository Trust Company) executed by the Authority and received and accepted by The Depository Trust Company.

**Section 2.06 Registration Books.** The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall at all reasonable times upon reasonable prior notice be open to inspection during regular business hours by the Authority and the City; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

**Section 2.07 Form and Execution of Bonds.** The Bonds and the authentication and registration endorsement and assignment to appear thereon shall be substantially in the form set forth on Exhibit A hereto. The Chair or Vice Chair of the Authority is hereby authorized and directed to execute each of the Bonds on behalf of the Authority and the Secretary of the Authority is hereby authorized and directed to countersign each of the Bonds on behalf of the Authority. The signatures of such Chair or Vice Chair or Secretary may be by printed, lithographed or engraved by facsimile reproduction. In case any officer whose signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds to the purchaser thereof, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until such delivery of the Bonds. Only those Bonds bearing thereon a certificate of authentication and registration in substantially the form set forth in Exhibit A hereto, executed manually and dated by the Trustee, shall be entitled to any benefit, protection or security hereunder or be valid or obligatory for any purpose, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated and registered have been duly authorized, executed, issued and delivered hereunder and are entitled to the benefit, protection and security hereof.

**Section 2.08 Temporary Bonds.** The Bonds may be issued in temporary form exchangeable for definitive Bonds when ready for delivery. Any temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority, shall be in fully registered form without coupons and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds it will execute and deliver definitive Bonds as promptly thereafter as practicable, and thereupon the temporary Bonds may be surrendered, for cancellation, at the Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.09 Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the Authority. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Trustee and, if such evidence be satisfactory to them an indemnity satisfactory to them shall be given, the Authority, at the expense of the Owner of such lost, destroyed or stolen Bond, shall execute, and the Trustee shall thereupon

authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee). The Authority may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Bond issued under this Section 2.11 and of the expenses which may be incurred by the Authority and the Trustee in the premises. Any Bond issued under the provisions of this Section 2.11 in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

**Section 2.10 CUSIP Numbers.** The Trustee, the Authority and the City shall not be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond or in any redemption notice. The Trustee may, in its discretion, include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Trustee, the Authority nor the City shall be liable for any inaccuracies in such numbers.

**Section 2.11 Conditions for the Issuance of Additional Bonds.** The Authority may at any time issue Additional Bonds pursuant to a Supplemental Indenture, payable from the Revenues as provided herein and secured by a pledge of and charge and lien upon the Revenues as provided herein equal to the pledge, charge and lien securing the Outstanding Bonds theretofore issued hereunder, and subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such Additional Bonds:

(a) No Event of Default shall be continuing after giving effect to the issuance of the Additional Bonds and the application of the proceeds thereof.

(b) The Supplemental Indenture shall require that the proceeds of the sale of such Additional Bonds shall be applied only to the refunding or repayment of any Outstanding Bonds, including the payment of costs and expenses of and incident to the authorization and sale of such Additional Bonds.

(c) The aggregate principal amount of Bonds issued and at any time Outstanding hereunder shall not exceed any limit imposed by law, by this Indenture or by any Supplemental Indenture.

(d) The Lease shall have been amended, if necessary, so that the Base Rental Payments payable by the City thereunder in each Fiscal Year shall at least equal scheduled Debt Service, including Debt Service on the Additional Bonds, in each Fiscal Year.

(e) If any Addition, Substitution or Removal is to be made with respect to the issuance of the Additional Bonds, then the Lease and Site Lease shall have been amended accordingly.

Nothing herein shall prevent payment of Debt Service on any Series of Additional Bonds from being secured and payable from sources, or by property, instruments or documents, not applicable to the Bonds or any one or more Series of Additional Bonds.

**Section 2.12 Proceedings for Authorization of Additional Bonds.** Whenever the Authority and the City shall determine to execute and deliver any Additional Bonds pursuant to Section 2.11, the Authority and the Trustee shall enter into a Supplemental Indenture providing for the issuance of such Additional Bonds, specifying the maximum principal amount of such Additional Bonds and prescribing the terms and conditions of such Additional Bonds.

The Supplemental Indenture shall prescribe the form or forms of such Additional Bonds and, subject to the provisions of Section 2.11, shall provide for the distinctive designation, denominations, method of numbering, dates, interest rates, provisions for redemption (if desired) and places of payment of principal and interest.

Before such Additional Bonds shall be issued, the City and the Authority shall file or cause to be filed the following documents with the Trustee:

(a) An Opinion of Bond Counsel setting forth (1) that such Bond Counsel has examined the Supplemental Indenture and any amendment to the Lease and to the Site Lease as described in Section 2.11(d) and (e); (2) that the execution and delivery of the Additional Bonds have been duly authorized by the City and the Authority; and (3) that any amendment to the Lease and to the Site Lease, when duly executed by the City and the Authority, will be a valid and binding obligation of the City and the Authority.

(b) A Certificate of the City that the requirements of Section 2.11 have been met.

(c) A Certificate of the City stating that the insurance required by Sections 7.03 and 7.05 of the Lease is in effect.

Upon the delivery to the Trustee of the foregoing instruments and upon the Trustee's receipt of Certificates of the City and of the Authority stating that all applicable provisions of this Indenture have been complied with (so as to permit the execution and delivery of the Additional Bonds in accordance with the Supplemental Indenture then delivered to the Trustee), the Trustee shall execute and deliver said Additional Bonds, in the aggregate principal amount specified in such Supplemental Indenture, to, or upon the Written Request of the Authority.

**Section 2.13 Limitations on the Issuance of Obligations Payable from Revenues.** The Authority will not, so long as any of the Bonds are Outstanding, issue any obligations or securities, however denominated, payable in whole or in part from Revenues except for Additional Bonds.

### **ARTICLE III**

#### **APPLICATION OF PROCEEDS**

##### **Section 3.01 Application of Proceeds of Sale of Series 2017\_\_ Bonds.**

(a) Upon the receipt of payment for the Series 2017\_\_ Bonds on the Closing Date of \$\_\_\_\_\_ (being the principal amount of the Series 2017\_\_ Bonds of \$[AMOUNT], less an underwriter's discount of \$\_\_\_\_\_, [plus a net original issue premium of \$\_\_\_\_\_/less original issue discount of \$\_\_\_\_\_]), the Trustee shall apply the proceeds of sale thereof as follows:

(i) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Construction Fund.

(ii) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Costs of Issuance Fund.

(iii) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Capitalized Interest Fund.

(b) The Trustee may, in its sole discretion, establish such funds or accounts in its records to facilitate the foregoing transfers and deposits.

**Section 3.02 Establishment and Application of Costs of Issuance Fund.** The Trustee shall establish, maintain and keep separate and apart from all other funds held by the Trustee a separate fund designated as the “Costs of Issuance Fund.” Notwithstanding any other provision of this Indenture, the Cost of Issuance Fund is not pledged to, nor does it secure, the Bonds.

The moneys in the Costs of Issuance Fund shall be used by the Trustee to pay the Costs of Issuance upon submission of Written Requisitions of the City in the form of Exhibit B hereto and stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

On the date that is 180 days after the Closing Date, or upon the earlier Written Request of the City, all amounts remaining in the Costs of Issuance Fund shall be transferred by the Trustee to the Revenue Fund to be used for the payment of interest on the Bonds.

### **Section 3.03 Construction Fund.**

(a) The Trustee shall establish and maintain a fund designated as the “Construction Fund.” Notwithstanding any other provision of this Indenture, the Construction Fund is not pledged to, nor does it secure, the Bonds.

(b) The Trustee shall hold the moneys in the Construction Fund separate and apart from all other funds held by the Trustee and shall use such moneys, as herein provided: (i) to pay the Construction Costs; or (ii) at the election of the City, as set forth in a Written Request of the City to the Trustee, to transfer moneys therefrom for deposit into the Interest Account to pay interest on the Bonds, when and as the same shall become due and payable.

Such payments of Construction Costs shall be made from time to time upon receipt by the Trustee of a Written Requisition of the City (in the form as set forth in Exhibit C hereto, signed by the Public Works Director and Comptroller or their designees) which requisition: (i) states with respect to each payment to be made: (A) the requisition number, (B) the name and address of the person, firm or authority to whom payment is due; (C) the amount to be paid; and (D) that each obligation therein has been properly incurred, and is a proper charge against the Construction Fund and has not been the basis of any previous disbursement; (ii) specifies in reasonable detail the nature of the obligation; and (iii) is accompanied by a bill or statement of account for each obligation.

Each such written requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

(c) If, after payment by the Trustee of all Written Requisitions of the City and delivery by the City to the Trustee of a Completion Certificate, there shall remain any balance of money in the Construction Fund, all money so remaining shall be transferred by the Trustee to the Interest Account or the Redemption Fund, as directed by the City in a Written Request.

**Section 3.04 Series 2017\_\_ Bonds Sinking Account.** The Trustee shall establish, maintain and keep separate and apart from all other funds held by the Trustee a separate account within the Principal Account designated as the “Series 2017\_\_ Bonds Sinking Account” into which the Trustee shall deposit sinking fund payments derived from Base Rental Payments made by the City and from which funds shall be applied to the Sinking Fund Redemption of Series 2017\_\_ Bonds pursuant to Section 4.01(d) hereof.

**Section 3.05 Validity of Bonds.** The validity of the authorization and issuance of the Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Lease. The recital contained in the Bonds that the same are issued pursuant to the Constitution and laws of the State shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

## **ARTICLE IV**

### **REDEMPTION OF BONDS**

#### **Section 4.01 Terms of Redemption.**

(a) Optional Redemption of Series 2017\_\_ Bonds. The Series 2017\_\_ Bonds maturing on or before \_\_\_\_\_ 15, 20\_\_ are not subject to optional redemption prior to their respective stated maturities. The Series 2017\_\_ Bonds maturing on or after \_\_\_\_\_ 15, 20\_\_, shall be subject to optional redemption, in whole or in part, upon forty-five (45) days written notice to the Trustee by the City of its intention to optionally prepay all or a portion of the Lease Payments, on any date on or after \_\_\_\_\_ 15, 20\_\_, from any available source of funds of the City, at a redemption price equal to the principal amount of the Series 2017\_\_ Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

Any such redemption shall be in such order of maturity as the City shall designate in the above-mentioned written notice (and, if no specific order of redemption is designated by the City, pro rata among maturities).

(b) Special Mandatory Redemption From Insurance or Condemnation Proceeds of Series 2017\_\_ Bonds. The Series 2017\_\_ Bonds shall also be subject to redemption as a whole, or in part on any date, to the extent the Trustee has received hazard or title insurance proceeds or condemnation proceeds not used to repair or replace any portion of the Leased Premises damaged, destroyed or taken and elected by the City to be used for such purpose as provided in Section 5.05 of the Indenture, at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

(c) Series 2017 Sinking Fund Redemption. The Series 2017\_\_ Bonds maturing on \_\_\_\_\_ 15, 20\_\_ are also subject to mandatory redemption prior to their stated maturity, in part by lot, from sinking account payments derived from scheduled Base Rental Payments made by the City and deposited in the Series 2017\_\_ Bonds Sinking Account, on each principal payment date commencing \_\_\_\_\_ 15, 20\_\_, at a redemption price equal to the principal amount thereof to be redeemed and interest accrued thereon to the dates fixed for mandatory redemption, without premium, according to the following schedule:

***Sinking Fund  
Redemption Date***

***Principal Amount to be  
Redeemed or Purchased***

---

† Maturity

The Series 2017\_\_ Bonds maturing on \_\_\_\_\_ 15, 20\_\_ are also subject to mandatory redemption prior to their stated maturity, in part by lot, from sinking account payments derived from scheduled Base Rental Payments made by the City and deposited in the Series 2017\_\_ Bonds Sinking Account, on each principal payment date commencing \_\_\_\_\_ 15, 20\_\_, at a redemption price equal to the principal amount thereof to be redeemed and interest accrued thereon to the dates fixed for mandatory redemption, without premium, according to the following schedule:

***Sinking Fund  
Redemption Date***

***Principal Amount to be  
Redeemed or Purchased***

---

† Maturity

The Series 2017\_\_ Bonds maturing on \_\_\_\_\_ 15, 20\_\_ are also subject to mandatory redemption prior to their stated maturity, in part by lot, from sinking account payments derived from scheduled Base Rental Payments made by the City and deposited in the Series 2017\_\_ Bonds Sinking Account, on each principal payment date commencing \_\_\_\_\_ 15, 20\_\_, at a redemption price equal to the principal amount thereof to be redeemed and interest accrued thereon to the dates fixed for mandatory redemption, without premium, according to the following schedule:

***Sinking Fund  
Redemption Date***

***Principal Amount to be  
Redeemed or Purchased***

---

† Maturity

provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of Term Bonds so redeemed, to be allocated among the sinking fund payments as are thereafter payable on a pro rata basis in integral multiples of \$5,000 to the extent possible and in inverse order thereafter. The City shall provide the Trustee with a revised schedule.

#### **Section 4.02 Purchase in Lieu of Redemption with Respect to Term Bonds.**

(a) The City shall have the option, in lieu of redemption of any Term Bonds, to direct the Trustee in a Written Request to use and withdraw amounts on deposit in the Series 2017\_\_ Bonds Sinking Account as sinking fund payments for such Term Bonds, at any time for the purchase by the City (or an agent on behalf of the City) of Series 2017\_\_ Term Bonds otherwise required to be redeemed on the following principal payment date, at public or private sale as and when and at such prices (including brokerage and other charges and including accrued interest) as the City may in its discretion determine. The par amount of any of the Term Bonds so purchased by the City and surrendered to the Trustee for cancellation in any twelve-month period ending on the principal payment date for such Term Bonds shall be credited towards and shall reduce the par amount of such Term Bonds otherwise required to be redeemed on such principal payment date pursuant to mandatory sinking fund payment (and corresponding mandatory redemption obligation) as set forth in Section 4.01(c) with respect to Series 2017\_\_ Bonds.

(b) The City shall also have the option to deliver for cancellation to the Trustee Term Bonds in any aggregate principal amount, and to receive a credit therefore against the mandatory sinking fund payment (and corresponding mandatory redemption obligation) set forth in Section 4.01(c) with respect to Series 2017\_\_ Bonds.

That option shall be exercised by the City on or before the 35th day preceding the applicable mandatory sinking fund redemption date, by furnishing to the Trustee a Written Certificate setting forth the extent of the credit to be applied with respect to the mandatory sinking fund payment for the specified Term Bonds. If the Written Certificate is not furnished timely to the Trustee, no credit shall be made against that mandatory sinking fund payment (and corresponding mandatory redemption obligation), although credits may be available against subsequent mandatory sinking fund payment.

To the extent not applied theretofore as a credit against any mandatory sinking fund payment (and the corresponding mandatory redemption obligation) described in the preceding paragraph, such a credit shall also be received by the City for any Term Bonds which prior thereto have been purchased or redeemed other than through the operation of the mandatory sinking fund payment or have been purchased for cancellation and cancelled by the Trustee.

Each Term Bond so delivered, redeemed previously, or purchased and cancelled, shall be credited by the Trustee at 100 percent of the principal amount thereof against the mandatory sinking fund payment, subject to the completion of the procedures described above. Any excess of that amount over the then current mandatory sinking fund payment shall be credited against subsequent mandatory sinking fund payment starting with the next subsequent such payment, unless otherwise directed by the City in a Written Certificate.

**Section 4.03 Selection of Bonds for Redemption.** Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of a particular maturity, the Trustee shall select the Bonds to be redeemed from all Bonds of such maturity or such given portion thereof not previously called for redemption, by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond. If less than all the Outstanding Bonds are called for redemption from proceeds of eminent domain or insurance at any one time, the Authority shall specify to the Trustee a principal

amount in each maturity to be redeemed which, to the extent practicable, results in approximately equal annual debt service on the Bonds Outstanding following such redemption.

#### **Section 4.04 Notice of Redemption.**

(a) Notice of redemption shall be mailed by first class mail, postage prepaid, not less than thirty (30) nor more than sixty (60) days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books, and to the Securities Depositories. Each notice of redemption shall state the name of the Bonds (including Series) to be redeemed, the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed, the maturity or maturities of the Bonds to be redeemed and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the City, for and on behalf of the Authority.

(b) Notwithstanding the foregoing, in the case of any optional redemption of the Bonds under Section 4.01(a) above, the notice of redemption shall state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds on the anticipated redemption date, and that the optional redemption shall not occur if, by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds have not been deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the Bonds to be optionally redeemed, such event shall not constitute an Event of Default, the Trustee shall send written notice to the Owners and to the Securities Depositories to the effect that the redemption did not occur as anticipated, and the Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of this Indenture.

The City shall have the right to rescind any optional or special mandatory redemption by written notice to the Trustee on or prior to the date fixed for redemption. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

**Section 4.05 Partial Redemption of Bonds.** Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered and of the same interest rate and maturity.

**Section 4.06 Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so



called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed pursuant to the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed.

**Section 4.07 Purchase of Bonds in Lieu of Optional Redemption.** If any Bond is called for optional redemption in whole or in part, the City may elect, as provided in this Section 4.07, to have such Bond purchased in lieu of redemption in accordance with this Section.

(a) Purchase in Lieu of Optional Redemption. Purchase in lieu of redemption shall be available to all Bonds called for optional redemption or for such lesser portion of such Bonds as constitute authorized denominations. In a Written Certificate, the City may direct the Trustee (or another agent appointed by the City to make such purchase upon behalf of the City), to purchase all or such lesser portion of the Bonds called for optional redemption. Any such direction to the Trustee must: (i) be in writing; (ii) state either that all the Bonds called for redemption therein identified are to be purchased or, if less than all of the Bonds called for redemption are to be purchased, identify those Bonds to be purchased by maturity date and outstanding principal amount in authorized denominations; and (iii) be received by the Trustee no later than 12:00 noon one Business Day prior to the scheduled redemption date thereof.

If so directed, the Trustee shall purchase such Bonds on the date which otherwise would be the redemption date of such Bonds. Any of the Bonds called for redemption that are not purchased in lieu of redemption shall be redeemed as otherwise required by the Indenture on such redemption date.

(b) Withdrawal of Direction to Purchase. On or prior to the scheduled redemption date, any direction given to the Trustee pursuant to this Section may be withdrawn by the City by delivering a Written Certificate to the Trustee. Subject generally to the terms of the Indenture, should a direction to purchase be withdrawn, the scheduled redemption of such Bonds shall occur.

(c) Purchaser. If the purchase is directed by the City, the purchase shall be made for the account of the City or its designee.

(d) Purchase Price. The purchase price of the Bonds purchased in lieu of redemption shall be equal to the outstanding principal of, accrued and unpaid interest on and the redemption premium, if any, which would have been payable on such Bonds on the scheduled redemption date for such redemption. To pay the purchase price of such Bonds, the Trustee shall use money deposited by the City with the Trustee for such purpose. The Trustee shall not purchase the Bonds pursuant to this Section if, by no later than the redemption date, sufficient moneys have not been deposited with the Trustee or such moneys are deposited, but are not available.

(e) No Notice to Bondholders. No notice of the purchase in lieu of redemption shall be required to be given to the Owners (other than the notice of redemption otherwise required under Section 4.04).

## **ARTICLE V**

### **REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST**

#### **Section 5.01 Pledge and Assignment; Revenue Fund.**

(a) Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues including any other amounts (including proceeds of the sale of the Bonds) held in the Revenue Fund, the Capitalized Interest Fund and the Redemption Fund are hereby pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of this Indenture, and the Revenues shall not be used for any other purpose while any of the Bonds remain Outstanding; provided, however, that out of the Revenues and other moneys there may be applied in such sums and for such purposes as are permitted hereunder. This pledge shall constitute a pledge of and charge and lien upon the Revenues for the payment of Debt Service on the Bonds in accordance with the terms hereof. Said pledge shall constitute a first lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after the Closing Date, without any physical delivery thereof or further act.

(b) The Authority hereby transfers in trust, grants a security interest in and assigns to the Trustee, for the benefit of the Owners from time to time of the Bonds: (i) all of the Revenues and amounts on deposit in the Revenue Fund, the Capitalized Interest Fund and the Redemption Fund, and (ii) all of the rights of the Authority in the Lease (except for certain rights to indemnification set forth therein), and in the Site Lease (except for certain rights to indemnification set forth therein). The Trustee shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and shall, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority, all of the obligations of the City under the Lease.

The assignment of the Lease and the Site Lease to the Trustee is solely in its capacity as Trustee under this Indenture and the duties, powers and liabilities of the Trustee in acting thereunder shall be subject to the provisions of this Indenture, including, without limitation, the provisions of Article VIII hereof. The Trustee shall not be responsible for any representations, warranties, covenants or obligations of the Authority.

(c) The Trustee agrees to provide written notice to the City at least five Business Days prior to each Lease Payment Date of the amount, if any, on deposit in the Revenue Fund which shall serve as a credit against, and shall relieve the City of making, the Base Rental Payments due from the City on such Lease Payment Date.

(d) Subject to Section 5.06, all Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Revenue Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such Funds. Within the Revenue Fund there shall be established an Interest Account and a Principal Account. All Revenues deposited with the

Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture.

**Section 5.02 Establishment and Maintenance of Accounts for Use of Money in the Revenue Fund.**

(a) Revenue Fund. All money in the Revenue Fund shall be set aside by the Trustee in the following respective special accounts and funds within the Revenue Fund (each of which is hereby created and each of which the Trustee hereby covenants and agrees to cause to be maintained) in the following order of priority:

- (i) Interest Account; and
- (ii) Principal Account.

All money in each of such accounts and funds shall be held in trust by the Trustee and shall be applied, used and withdrawn only for the purposes hereinafter authorized in this Section.

(b) Interest Account. On or before each Interest Payment Date, and on or before each redemption date, the Trustee shall set aside from the Revenue Fund and deposit in the Interest Account that amount of money which is equal to the amount of interest coming due and payable on all Outstanding Bonds on such date.

No deposit need be made in the Interest Account if the amount contained therein, including transfers from the Capitalized Interest Fund or the Construction Fund, is at least equal to the aggregate amount of interest coming due and payable on all Outstanding Bonds on such Interest Payment Date.

All money in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

(c) Principal Account. On or before each \_\_\_\_\_ 15, commencing \_\_\_\_\_ 15, 20\_\_, the Trustee shall set aside from the Revenue Fund and deposit in the Principal Account an amount of money equal to the principal amount (including the payment of principal with respect to any mandatory sinking account payments) of all Outstanding Bonds maturing or subject to mandatory sinking account payments on such \_\_\_\_\_ 15. On or before each redemption date, the Trustee shall transfer from the Revenue Fund and deposit in the Principal Account the principal amount of the Bonds to be redeemed, and premium, if any.

No deposit need be made in the Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal of all Outstanding Bonds maturing by their terms on such \_\_\_\_\_ 15.

All money in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds as they shall become due and payable, whether at maturity or redemption, and premium, if any.

**Section 5.03 Capitalized Interest Fund.** The Trustee shall establish and maintain the Capitalized Interest Fund, amounts in which shall be used and withdrawn by the Trustee solely for

the purpose of making transfer to the Interest Account to pay the interest on the Bonds. On each \_\_\_\_\_ 15 and \_\_\_\_\_ 15, commencing \_\_\_\_\_ 15, 2017, the Trustee shall transfer from the Capitalized Interest Fund to the Interest Account an amount equal to the interest due on the Series 2017\_\_ Bonds on such date.

**Section 5.04 Redemption Fund.** The Trustee shall establish and maintain the Redemption Fund, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium on the Bonds to be redeemed pursuant to Sections 4.01(a), (b), or (c); provided, however, that at any time prior to the selection of Bonds for redemption, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, in accordance with Section 4.02.

**Section 5.05 Insurance and Condemnation Fund; Title Insurance.**

(a) Establishment of Fund. Upon the receipt of any proceeds of insurance or eminent domain with respect to any portion of the Leased Premises, the Trustee shall establish and maintain an Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section 5.05.

(b) Application of Insurance Proceeds. Any Net Proceeds of insurance against accident to or destruction of the Leased Premises collected by the City in the event of any such accident or destruction shall be paid to the Trustee by the City pursuant to Section 8.01 of the Lease and deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination, within forty-five (45) days following the date of such deposit, to replace, repair, restore, modify or improve the Leased Premises, then such Net Proceeds shall be promptly transferred by the Trustee to the Redemption Fund and applied to the redemption of Bonds pursuant to Section 4.01(c) to the extent that such Net Proceeds permit. All proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Redemption Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Premises by the City, upon receipt of Written Requisitions of the City, as agent for the Authority, which: (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Any balance of the proceeds remaining after such work has been completed as certified by the City to the Trustee shall after payment of amounts due the Trustee be paid to the City.

(c) Application of Eminent Domain Proceeds. If all or any part of the Leased Premises shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited with the Trustee in the Insurance and Condemnation Fund pursuant to Section 8.01 of the Lease and shall be applied and disbursed by the Trustee as follows:

(i) If the City has not given written notice to the Trustee, within forty-five (45) days following the date on which such Net Proceeds are deposited with the Trustee, of its

determination that such Net Proceeds are needed for the replacement of the Leased Premises or such portion thereof, the Trustee shall transfer such Net Proceeds to the Redemption Fund to be applied towards the redemption of the Bonds pursuant to Section 4.01(c).

(ii) If the City has given written notice to the Trustee, within forty-five (45) days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Premises or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such repair or rehabilitation, upon the filing of Written Requisitions of the City as agent for the Authority in the form and containing the provisions set forth in subsection (b) of this Section 5.05. Each such Written Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

(d) Title Insurance. Proceeds of any policy of title insurance received by the Trustee in respect of the Leased Premises or any portion thereof for the benefit of the Owners, shall be applied and disbursed by the Trustee as follows:

(i) If the City determines that the title defect giving rise to such proceeds has not materially affected the City's right to the use and possession of the Leased Premises and will not result in an abatement of Base Rental Payments by the City under the Lease, upon Written Request of the City such proceeds shall, if there is first delivered to the Trustee a Written Certificate of a City Representative to the effect that the annual fair rental value of the Leased Premises, notwithstanding the title defect for which the payment was made, is at least equal to the maximum amount of Base Rental Payments becoming due under the Lease in the then current Lease Year or any subsequent Lease Year, be paid to the City to be used for any lawful purpose. If the City cannot deliver the certificate described in the preceding sentence, then such amounts shall be transferred to the Redemption Fund and used to redeem Bonds pursuant to Section 4.01(c) hereof, unless the City otherwise directs in writing that such amounts are to be transferred to the Rebate Fund.

(ii) If any portion of the Leased Premises has been affected by such title defect and if the City certifies in writing that such title defect will result in an abatement of Base Rental Payments by the City under the Lease, then upon Written Request of the City: either (A) such insurance proceeds shall be used by the City to remove the title defect, or (B) the Trustee shall, if not notified in writing by a City Representative within 90 days of the receipt by the Trustee of the insurance proceeds that the City will use the proceeds to remove the title defect, deposit such proceeds in the Redemption Fund and such proceeds shall be applied to redeem Bonds in the manner provided in Section 4.01(c) hereof.

(iii) Any excess proceeds with respect to title insurance remaining after application pursuant to the terms of this Indenture shall be paid to the City to be used for any lawful purpose.

**Section 5.06 Investments.** All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments. Such investments shall be directed by the City (as agent for the Authority) pursuant to a Written Request of the City filed with the Trustee at least two (2) Business Days in advance of the making of such investments which Written Request shall constitute the City's determination that such investments constitute a Permitted Investment. In the absence of any such directions from the City, the Trustee shall invest any such moneys in Permitted Investments described in subparagraph

(x) of the definition thereof. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. The Authority shall take the liquidity needs of the moneys held hereunder into account in making investments.

Unless otherwise provided in a Supplemental Indenture, all interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder (except the Construction Fund, Costs of Issuance Fund and Rebate Fund) shall be deposited by the Trustee in the Revenue Fund, except that interest or gain derived from the investment of the amount in the Construction Fund, Costs of Issuance Fund, Rebate Fund, shall, subject to Section 3.04(b) with respect to the Construction Fund, be retained therein.

To the extent that any investment agreement requires the payment of fees, such fees shall be paid from available moneys in the Revenue Fund after the deposit of moneys described in Section 5.02 (a) through (c) above. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee or its affiliates may act as sponsor or depository with respect to any Permitted Investment. To the extent that any Permitted Investment purchased by the Trustee are registrable securities such Permitted Investment shall be registered in the name of the Trustee on behalf of the Owners. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section 5.06.

The Authority acknowledges (and the City by its execution of the Site Lease acknowledges) that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority and the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

Such investments shall be valued by the Trustee not less often than quarterly, at the market value thereof, exclusive of accrued interest.

The Trustee may utilize securities pricing services that may be available to it making such valuations, including those within its accounting system with respect to the Bonds, and conclusively rely thereon.

## ARTICLE VI

### PARTICULAR COVENANTS

**Section 6.01 Punctual Payment.** The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Revenues and other assets pledged for such payment as provided in this Indenture.

**Section 6.02 Against Encumbrances.** The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves

the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes. Nothing in this section shall in any way limit the City's ability (i) to encumber its assets other than Leased Premises or (ii) to encumber the Leased Premises in accordance with the terms of the Lease.

**Section 6.03 Power to Issue Bonds and Make Pledge and Assignment.** The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

**Section 6.04 Accounting Records.** The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds, the Revenues, the Lease and all funds and accounts established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Authority and the City, during business hours and under reasonable circumstances.

**Section 6.05 Compliance with Indenture.** The Trustee will not execute or deliver any Bonds in any manner other than in accordance with the provisions hereof, and the Authority will not suffer or permit any default by it to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements, conditions, covenants and terms hereof required to be complied with, kept, observed and performed by it.

**Section 6.06 Tax Covenants for Series 2017\_\_ Bonds.** The Authority covenants to and for the benefit of the Owners of the Series 2017\_\_ Bonds that, notwithstanding any other provisions of this Indenture (other than Section 11.01 hereof), it will:

(a) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Series 2017\_\_ Bonds or the moneys and investments held in the funds and accounts established under this Indenture which would cause the Series 2017\_\_ Bonds to be arbitrage bonds under Section 103(b) and Section 148 of the Code or which would otherwise cause the interest payable on the Series 2017\_\_ Bonds to be includable in gross income for federal income tax purposes;

(b) not take or cause to be taken any other action or actions, or fail to take any action or actions, which would cause the interest payable on the Series 2017\_\_ Bonds to be includable in gross income for federal income tax purposes;

(c) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Authority on the Series 2017\_\_ Bonds will be excluded from the gross income, for federal income tax purposes, of the Owners pursuant to Section 103 of the Code; and

(d) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2017\_\_ Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

In furtherance of the covenants in this Section 6.06, the Authority shall execute, deliver and comply with the provisions of the Tax Certificate for Series 2017\_\_ Bonds, which is by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full including all of the defined terms therein, and by its acceptance of this Indenture the Trustee acknowledges receipt of such Tax Agreement and acknowledges its incorporation in this Indenture by this reference. The Trustee agrees it will invest funds held under this Indenture in accordance with the terms of this Indenture (this covenant shall extend throughout the term of the Series 2017\_\_ Bonds, to all funds and accounts created under this Indenture and all moneys on deposit to the credit of any fund or account).

#### **Section 6.07 Rebate Fund for the Series 2017\_\_ Bonds.**

(a) The Trustee shall establish and maintain, when required, a fund separate from any other fund established and maintained hereunder designated as the Rebate Fund for the Series 2017\_\_ Bonds, which is not pledged to the Bonds. Neither the Authority nor the Owner of any Bonds shall have any rights in or claim to such money. Within the Rebate Fund, the Trustee shall maintain such accounts as shall be necessary to comply with instructions of the City given pursuant to the terms and conditions of the Tax Certificate. Subject to the transfer provisions provided in paragraph (e) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement (as defined in the Tax Certificate) for the Series 2017\_\_ Bonds, for payment to the federal government of the United States of America.

All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 6.07, by Section 6.06 and by the Tax Certificate (which is incorporated herein by reference). The Trustee shall be deemed conclusively to have complied with such provisions if it follows the Written Request of the City including supplying all necessary information in the manner provided in the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the Authority or City with the terms of the Tax Certificate or any other tax covenants contained herein. The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness of any rebate report or rebate calculations. The Trustee shall have no independent duty to review such calculations or enforce the compliance by the City with such rebate requirements. The Trustee shall have no duty or obligation to determine the applicability of the Code and shall only be obligated to act in accordance with Written Request provided by the City.

(b) Upon the City’s Written Request, an amount shall be deposited to the Rebate Fund by the Trustee from deposits by the City, if and to the extent required, so that the balance in the Rebate Fund shall equal the Rebate Requirement for the Series 2017\_\_ Bonds. Computations of the Rebate Requirement shall be furnished by or on behalf of the City in accordance with the Tax Certificate. The Trustee shall supply to the City all necessary information in the manner provided in the Tax Certificate, to the extent such information is reasonably available to the Trustee.

(c) The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section 6.07, other than from moneys held in the funds and accounts created under this Indenture or from other moneys provided to it by the City.



(d) At the Written Request of the City, the Trustee shall invest all amounts held in the Rebate Fund in Permitted Investments. Moneys shall not be transferred from the Rebate Fund except as provided in paragraph (e) below. The Trustee shall not be liable for any consequences arising from such investment.

(e) Upon receipt of the City's Written Request, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as so directed. In addition, if the City so directs, the Trustee will deposit money into or transfer money out of the Rebate Fund from or into such accounts or funds as directed by the City's Written Request; provided, however, only moneys in excess of the Rebate Requirement may, at the written direction of the City, be transferred out of the Rebate Fund to such other accounts or funds or to anyone other than the United States in satisfaction of the arbitrage rebate obligation. Any funds remaining in the Rebate Fund after each five year remission to the United States, redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the City.

(f) Notwithstanding any other provision of this Indenture, including in particular Article X, the obligation to remit the Rebate Requirement to the United States and to comply with all other requirements of this Section 6.07, Section 6.06 and the Tax Certificate shall survive the defeasance or payment in full of the Series 2017\_\_ Bonds.

**Section 6.08 Collection of Amounts Due Under Lease; Amendments.** The Trustee shall promptly collect all amounts due from the City pursuant to the Lease. Subject to the provisions of Article VIII, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority, for the enforcement of all of the obligations of the City under the Lease.

The Authority shall not amend, modify or terminate any of the terms of the Lease or the Site Lease, or consent to any such amendment, modification or termination, without the prior written consent of the Trustee. The Trustee shall give such written consent only if it determines the requirements of Section 12.05 of the Lease have been complied with.

**Section 6.09 Waiver of Laws.** The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension of law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

**Section 6.10 Further Assurances.** The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 Events of Default; Notice.** The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal, redemption premium, if any or sinking fund installments of any Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption (other than as permitted by Section 4.04(b)) or otherwise.

(b) Default in the due and punctual payment of any installment of interest on any Bonds when and as the same shall become due and payable.

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice can be corrected, but not within such sixty (60) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The occurrence and continuation of an event of default under and as defined in the Lease.

If an Event of Default occurs hereunder, the Trustee shall give notice, at the expense of the City, of such Event of Default to the Owners. Such notice shall state that an Event of Default has occurred and shall provide a brief description of such Event of Default. The Trustee in its discretion may withhold notice if it deems it in the best interests of the Owners. Such notice provided shall be given by first-class mail, postage prepaid, to the Owners within 30 days of the Trustee's receipt of knowledge of the occurrence of such Event of Default.

### **Section 7.02 Remedies Upon Event of Default.**

(a) Upon the occurrence and continuance of any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Owners of not less than 50% in principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction, and payment of its fees and expenses, including the fees and expenses of its counsel, shall in its own name and as the Trustee of an express trust:

(1) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners hereunder, and require the Authority or the City to carry out any agreements with or for the benefit of the Owners of Bonds and to perform its or their duties under the Lease and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of the Lease or this Indenture, as the case may be;

(2) bring suit upon the Bonds;

(3) by action or suit in equity require the Authority to account as if it were the trustee of an express trust for the Owners of Bonds; or

(4) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of Bonds hereunder.

(b) Upon the occurrence of an Event of Default, the Trustee shall be entitled as a matter of right to the appointment of a receiver or receivers for the Revenues, ex parte, and without notice, and the Authority consents to the appointment of such receiver upon the occurrence of an Event of Default. In the case of any receivership, insolvency, bankruptcy, or other judicial proceedings affecting the Authority or the City, the Trustee shall be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have the claims of the Trustee and the Bond Owners allowed in such proceedings, without prejudice, however, to the right of any Bond Owner to file a claim on his or her own behalf; provided, the Trustee shall be entitled to compensation and reimbursement for the reasonable fees and expenses of its counsel and indemnity for its reasonable expenses and liability from the Authority, the City or the Bond Owners, as appropriate.

(c) Notwithstanding the foregoing, neither this Indenture nor the Bonds provide for the remedy of acceleration of principal or interest due with respect to the Bonds prior to their stated due dates.

**Section 7.03 Application of Revenues and Other Funds After Default.** If an Event of Default shall occur and be continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee as follows and in the following order:

(a) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture;

(b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

**Section 7.04 Trustee to Represent Bond Owners.** The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bond Owners, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, the Trustee shall, proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under the Bonds, this Indenture or any other law; and upon instituting such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Revenues and other assets pledged under this Indenture, pending such proceedings. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

**Section 7.05 Bond Owners' Direction of Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, and upon indemnification of the Trustee to its reasonable satisfaction, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would expose it to liability.

**Section 7.06 Limitation on Bond Owners' Right to Sue.** Notwithstanding any other provision hereof, no Owner of any Bonds shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease or any other applicable law with respect to such Bonds, unless (a) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have failed to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) no direction inconsistent with such written request shall have been given to the Trustee during such sixty (60) day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy

hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Lease or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

**Section 7.07 Absolute Obligation of Authority.** Nothing in Section 7.06 or in any other provision of this Indenture or in the Bonds contained shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

**Section 7.08 Termination of Proceedings.** If any proceedings taken by the Trustee or any one or more Bond Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bond Owners, then the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

**Section 7.09 Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Trustee or the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**Section 7.10 No Waiver of Default.** No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

**Section 7.11 Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Authority, the Trustee, their officers, employees and agents, and the Owners any right, remedy or claim under or by reason of this Indenture, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the City, the Authority, the Trustee, their officers, employees and agents, and the Owners.

**Section 7.12 Remedies Subject to Provisions of Law.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the City Charter and other applicable law, and all of the provisions of this Article are intended to be subject to the City Charter and all other applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render

this instrument or the provisions hereof invalid or unenforceable under the provisions of the City Charter or other applicable law.

## **ARTICLE VIII**

### **THE TRUSTEE**

#### **Section 8.01 Duties, Immunities and Liabilities of Trustee.**

(a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The City may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee if at any time requested to do so by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with subsection (e) of this Section 8.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its Leased Premises shall be appointed, or any public officer shall take control or charge of the Trustee or of its Leased Premises or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and the City and thereupon shall appoint a successor Trustee by an instrument in writing. Any such removal shall be made upon at least thirty (30) days' prior written notice to the Trustee.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books. Upon receiving such notice of resignation, the City as agent for the Authority shall promptly appoint a successor Trustee by an instrument in writing.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within sixty (60) days of giving notice of removal or notice of resignation as aforesaid, the City (as agent of the Authority) shall petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executing and delivering to the Authority, the City and its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the City (as agent of the Authority) or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more

fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any Leased Premises held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other Leased Premises subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise corporate trust powers, shall have (or, in the case of a corporation or national banking association included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least one hundred million dollars (\$100,000,000), shall be subject to supervision or examination by federal or state agency, so long as any Bonds are Outstanding. If such corporation or national banking association publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining agency above referred to then for the purpose of this subsection (e), the combined capital and surplus of such corporation or national banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section 8.01.

**Section 8.02 Merger or Consolidation.** Any bank or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 8.01 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. Notice of such merger or conversion shall be provided to the Authority and the City within five (5) Business Days following the public announcement of such merger or conversion.

**Section 8.03 Liability of Trustee.**

(a) The recitals of facts herein and in the Bonds contained shall not be taken as statements of the Trustee, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Lease, nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the

Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof, at its Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee shall not be responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City and the Authority of the terms, conditions, covenants or agreements set forth in the Lease, other than the covenants of the City to make Lease Payments to the Trustee when due, such reports and certifications as the City are required to file with the Trustee thereunder.

(f) Except for giving notice of an Event of Default pursuant to Section 7.01 hereof, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it is not assured to its satisfaction that the repayment of such funds or adequate indemnity against such risk or liability is reasonably assured to it.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of Owners pursuant to this Indenture,



unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture and the Lease relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of Section 8.01(a), this Section 8.03 and Section 8.04 hereof.

(j) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Premises. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease or this Indenture for the existence, furnishing or use of the Leased Premises.

(l) Except to the extent that information was provided by the Trustee, the Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The indemnities extended to the Trustee also extend to its directors, officers, employees and agents.

(n) The Trustee may become the owner or pledgee of any Bonds with the same rights it would have if it were not Trustee.

(o) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Leased Premises, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(p) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (a) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign

for the party signing such instructions and/or directions, and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

**Section 8.04 Right to Rely on Documents.** The Trustee shall be protected in acting upon any notice, facsimile, e-mail, resolution, request, requisition, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

**Section 8.05 Preservation and Inspection of Documents.** All documents received by the Trustee under the provisions of this Indenture shall be retained by the Trustee and shall be subject at all reasonable times to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

**Section 8.06 Compensation and Indemnification.** The Authority shall pay to the Trustee from time to time compensation for all services rendered under this Indenture and also all reasonable expenses and disbursements (including fees and expenses of counsel), incurred in and about the performance of its powers and duties under this Indenture, in accordance with the fee schedule attached hereto as Exhibit D, as Exhibit D may be amended from time to time by written agreement of the City and the Trustee.

The Authority shall indemnify, defend and hold harmless the Trustee against any loss, liability or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. As security for the performance of the obligations of the Authority under this Section 8.06 to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all Leased Premises and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest on particular Bonds. The rights of the Trustee and the obligations of the Authority under this Section 8.06 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture.

## ARTICLE IX

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

#### Section 9.01 Amendments Permitted.

(a) This Indenture and any of the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental thereto, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding which are affected by the amendment, shall have been filed with the Trustee; provided, however, no such modification or amendment without the consent of the Owners of all of the Bonds then Outstanding which would be affected thereby, shall (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or (iii) permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or (iv) deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Consent of the Owners may be obtained as provided in Section 9.02 hereof.

(b) In addition to any Supplemental Indenture authorized pursuant to Section 2.12 hereof, this Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Authority in this Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority, or to close the Indenture against, or provide limitations and restrictions in addition to the limitations and restrictions contained in the Indenture on, the authentication and delivery of Additional Bonds;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority may deem necessary or desirable;

(iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute; or

(iv) to modify, amend or supplement this Indenture in such manner as to cause interest on the Bonds to remain excludable from gross income under the Code.

(v) to permit the Trustee to comply with any duties imposed upon it by law;

(vi) to provide for the refunding or advance refunding of any Bonds, so long as such amendment is not inconsistent with Article X hereof;

(vii) to evidence the appointment of a separate trustee or the succession of a new trustee hereunder;

(viii) to make any amendments appropriate or necessary to provide for or facilitate the delivery of credit enhancement for any Bonds; or

(ix) for any other reason, provided such modification or amendment does not, in the judgment of the Trustee, materially adversely affect the interests of the Owners of the Bonds then Outstanding.

(c) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Prior to the Trustee entering into any Supplemental Indenture hereunder, there shall be delivered to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion from gross income for purposes of federal income taxes of interest on the Bonds.

(e) Provision of this Section are subject to Section 9.03 hereof.

## **Section 9.02 Consent of Owners.**

(a) If at any time the Authority (or the City on behalf of the Authority) shall request the Trustee to enter into any Supplemental Indenture requiring consent of the Owners, the Trustee, upon being satisfactorily indemnified with respect to expenses, shall cause notice (unless waived by the affected Owners in their consent) of the proposed Supplemental Agreement to be mailed to each affected Owners, as shown in the Registration Books at the close of business on the 15th day preceding that mailing and at its address as it appears on the Registration Books on that 15th day preceding the mailing. The notice shall describe briefly the nature of the proposed amendment and shall state that copies thereof are on file at the office of the Trustee designated therein for inspection by all such Owners.

Consent of Owners may also be evidenced: (i) by Bonds being sold to such Owners under an official statement or other offering document which describes the proposed amendment and states that their purchase shall be treated as their consent to such amendment; or (ii) in any other manner acceptable to the Trustee.

If the Supplemental Indenture will not take effect so long as any particular Bonds remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of determining the required consents.

(b) Disqualified Bonds. Bonds owned or held by or for the account of the Authority or the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds provided in this Article, and shall not be entitled to consent to or take any other action provided in this Article; provided, however, that the Trustee shall not be deemed to have knowledge that any Bond is owned or held by or for the account of the Authority or the City unless the Authority or the City is the registered Owner or the Trustee has received written notice that any other registered Owner is holding for the account of the Authority or City.

(c) The Trustee shall not be subject to any liability to any Owner of Bonds by reason of the Trustee's failure to mail, or the failure of any such Owner to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section.

(d) If the Trustee shall receive, within a period not exceeding one year as prescribed by the City upon behalf of the Authority, following the mailing of the notice (unless waived by the affected Owners in their consent), an instrument or document or instruments or documents, in a form or forms to which the Trustee does not object reasonably, purporting to be executed by the Owners of not less than a majority in aggregate principal amount of the affected Outstanding Bonds, but not otherwise, the Trustee shall execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice, without liability or responsibility to any affected Owner, regardless of whether that Owner shall have consented thereto. The instrument or document or instruments or documents described in this paragraph shall refer to the proposed Supplemental Indenture in the form described in the notice and shall consent specifically to the Supplemental Indenture in substantially that form.

(e) At any time after the Owners of the required percentage of the Bonds shall have filed their consents with the Trustee to the Supplemental Indenture, the Trustee shall make and file with the Authority and City a written statement that the Owners of the required percentage of the Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed. Prior to the Trustee filing such written statement, a consent may be revoked in writing by the Owner who gave the consent or by a subsequent Owner of the Bonds by a written revocation received by the Trustee.

**Section 9.03 City's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, so long as the City is not in default under the Lease, a Supplemental Indenture under this Article shall not become effective unless and until the City shall have consented in writing to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture, together with a copy of the proposed Supplemental Indenture, to be mailed by first-class mail to the City at least 30 days prior to the proposed date of execution and delivery of any Supplemental Indenture.

**Section 9.04 Effect of Supplemental Indenture.** Upon the execution of any Supplemental Indenture pursuant to this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be

determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 9.05 Endorsement of Bonds; Preparation of New Bonds.** Bonds delivered after the execution of any Supplemental Indenture pursuant to this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same series and maturity.

**Section 9.06 Amendment of Particular Bonds.** The provisions of this Article IX shall not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by him.

## **ARTICLE X**

### **DEFEASANCE**

#### **Section 10.01 Discharge of Indenture.**

(a) Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

(i) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(ii) by depositing with the Trustee, in trust, at or before maturity, Defeasance Obligations in the necessary amount (as provided in Section 10.02) to pay or redeem such Bonds; or

(iii) by delivering to the Trustee, for cancellation by it, such Bonds.

If the Authority shall also pay or cause to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority evidenced by a Written Certificate of the Authority (or of the City upon behalf of the Authority), filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied (except for those provisions surviving by reason of Section 10.01(c) in the event that the Bonds are

deemed to be paid and discharged pursuant to Section 10.02 hereof). In such event, upon the Written Request of the Authority (or of the City upon behalf of the Authority), the Trustee shall execute and deliver to the Authority and City all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other Leased Premises held by it pursuant to this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption.

If the Authority shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of the Outstanding Bonds of a particular Series, or of a particular maturity or particular Bonds within a Series, the Debt Service due or to become due thereon, at the times and in the manner stipulated therein and in the Indenture, such Bonds shall cease to be entitled to any lien, pledge, benefit or security under the Indenture, and all covenants, agreements and obligations of the Authority to the Owners of such Bonds shall thereupon cease, terminate and become void and be discharged and satisfied (subject to provisions of subsection (c), below, if applicable).

Bonds or interest installments, for the payment or redemption of which moneys shall have been set aside and held in trust by the Trustee (through deposit by the City of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof, shall be deemed to have been paid within the meaning and with the effect expressed in this Section 10.01(a).

(b) If, in connection with a redemption of all or any part of the Bonds, or in connection with providing for payment of all or any part of the Bonds pursuant to this Article X, moneys and/or Defeasance Obligations are deposited with the Trustee sufficient to pay Debt Service on all or a portion of the Bonds being defeased in accordance with Section 10.02 to any date after the first date on which such Bonds may be redeemed, the City on behalf of the Authority may expressly reserve and retain the right to subsequently change the date on which any such Bonds are to be redeemed. The City may further reserve and retain the right to restructure the moneys and/or Defeasance Obligations held by the Trustee for payment such Bonds as provided in Section 10.02(c), (d) or (e), and to apply any of the proceeds, which are available following such restructuring and are not needed to pay Debt Service on the Bonds being defeased, for any lawful purpose.

If the City desires to reserve and retain any such rights, it shall so advise the Trustee at the time of the deposits of such funds with the Trustee and the Trustee shall include a statement of such reserved and retained rights in the notice given to Owners pursuant to Section 10.02(b).

(c) Notwithstanding the foregoing, any provisions of the Indenture which relate to:

- (i) the maturity of Bonds;
- (ii) the interest payments and dates thereof;
- (iii) the optional and mandatory redemption provisions;
- (iv) the credits against the mandatory sinking fund requirements;
- (v) the exchange, transfer and registration of Bonds;
- (vi) the replacement of mutilated, destroyed, lost or stolen Bonds;

- (vii) the safekeeping and cancellation of Bonds;
- (viii) the nonpresentment of Bonds;
- (ix) the holding of moneys in trust;
- (x) the repayments to the Authority from the escrow fund;
- (xi) the timely payment of any rebate of arbitrage earnings to the United States and any other provisions which relate to exclusion of interest on the Bonds from gross income for federal income tax purposes; and
- (xii) the duties of the Trustee in connection with all of the foregoing and payment of its fees and expenses;

shall remain in effect and shall be binding upon the Authority, the Trustee and the Owners, notwithstanding the release, discharge and satisfaction of the Indenture. The provisions of this Section 10.01(c) shall survive the release, discharge and satisfaction of the Indenture.

#### **Section 10.02 Deposit of Money or Securities with Trustee to Defeas Bonds.**

(a) Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and available for such purposes.

(b) Subject to the provisions of subsection (c) and subsection (d) of this Section 10.02, any Outstanding Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid, within the meaning and with the effect expressed in Section 10.01(a), if:

(i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the City upon behalf of the Authority shall have given to the Trustee written instructions, accepted in writing by the Trustee, to mail as provided in Article IV of the Indenture notice of redemption of such Bonds (other than Bonds which have been purchased or otherwise acquired by the City and delivered to the Trustee as hereinafter provided prior to the mailing of such notice of redemption);

(ii) there shall have been deposited with the Trustee (or another trust company selected by the City which meets the requirements of Section 8.01(e)), in trust for the Owners of such Bonds, either moneys in an amount which shall be sufficient, or Defeasance Obligations (including any Defeasance Obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient (without regard to further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, which earnings are to be held likewise in trust and so committed, except as provided herein) to pay when due the Debt Service due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be;



(iii) in the event said Bonds are not by their terms subject to redemption within the next succeeding 60 days, the City upon behalf of the Authority shall have given written instructions to the Trustee in form satisfactory to it to mail a notice to the Owners of such Bonds, within 15 days of the date on which the Bonds are deemed to be paid and discharged, at their address as it appears on the Registration Books on that date on which such Bonds are deemed to be paid and discharged. The notice shall: (1) state the numbers of the Bonds deemed to be paid and discharged, or shall state that all Bonds of a particular Series are deemed to be paid and discharged; (2) that the deposit required by (ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section 10.02; and (3) state such maturity or redemption date upon which moneys are expected to be available for the payment of the Debt Service on said Bonds (other than Bonds which have been purchased or otherwise acquired by the City and delivered to the Trustee as hereinafter provided prior to the mailing of the notice of redemption referred to in clause (i) hereof);

(iv) the Trustee shall have received a report of an independent firm of certified public accountants or a financial consulting firm of recognized standing in the field of municipal bonds to the effect that the amount of principal of and interest when due on the Defeasance Obligations and any money deposited at the same time with the Trustee shall be sufficient to pay when due the Debt Service due and to become due on said Bonds prior to and on the redemption or maturity date thereof, as the case may be; and

(v) if the Bonds deemed paid with Defeasance Obligations were issued as obligations the interest on which was excluded from gross income for federal tax purposes, then the City shall furnish to the Trustee an opinion of Bond Counsel to the effect that the provisions for paying such Bonds (assuming compliance by the Authority, the City and the Trustee with their duties under the Indenture and any related escrow agreement) will not, by itself, cause such Bonds to lose such exclusion.

Any notice of redemption mailed pursuant to (i) with respect to Bonds which constitute less than all of the Outstanding Bonds of any maturity within a Series shall specify the letter and number or other distinguishing mark of each such Bond.

Defeasance Obligations shall consist of securities which are not subject to redemption prior to their maturity other than at the option of the holder thereof, or shall consist of securities as to which an irrevocable notice of redemption of such securities on a specified redemption date has been given and such securities are not otherwise subject to redemption prior to such specified date.

(c) The Trustee shall, if so directed by the City, (i) prior to the maturity date of Bonds that have been deemed to have been paid in accordance with this Section 10.02 (the "Defeased Bonds") which are not to be redeemed prior to their maturity date or (ii) prior to mailing of the notice of redemption referred to in clause (i) above with respect to any Defeased Bonds which are to be redeemed on any date prior to their maturity, apply moneys deposited with the Trustee for such Defeased Bonds and redeem or sell Defeasance Obligations so deposited with the Trustee and apply the proceeds thereof to the purchase of such Defeased Bonds and the Trustee shall immediately thereafter cancel all such Defeased Bonds so purchased; provided, however, that the moneys and Defeasance Obligations remaining on deposit with the Trustee after such purchase and cancellation of such Defeasance Bonds must be determined by the Trustee to be sufficient to pay when due the Debt Service due or to become due on all remaining unpaid Defeased Bonds, in respect of which

such moneys and Defeasance Obligations are being held by the Trustee, on or prior to the redemption date or maturity date thereof, as the case may be.

(d) If, at any time (i) prior to the maturity date of Defeased Bonds which are not to be redeemed prior to their maturity date or (ii) prior to the mailing of the notice of redemption referred to in clause (i) with respect to any Defeased Bonds which are to be redeemed on any date prior to their maturity, the City shall purchase or otherwise acquire any such Defeased Bonds and deliver such Defeased Bonds to the Trustee prior to their maturity date or redemption date, as the case may be, the Trustee shall immediately cancel all such Defeased Bonds so delivered; and such delivery of Defeased Bonds to the Trustee shall be accompanied by Written Direction from the City to the Trustee as to the manner in which such Defeased Bonds are to be applied against the obligation of the Trustee to pay or redeem Defeased Bonds. Such directions of the City shall also specify the portion, if any, of such Defeased Bonds so purchased or delivered and cancelled to be applied against the obligation of the Trustee to pay Defeased Bonds upon their maturity date or dates and the portion, if any, of such Defeased Bonds so purchased or delivered and cancelled to be applied against the obligation of the Trustee to redeem Defeased Bonds on any date or dates prior to their maturity.

(e) If on any date: (i) as a result of any purchases, acquisitions and cancellations of Defeased Bonds as provided in this Section 10.02 the total amount of moneys and Defeasance Obligations remaining on deposit with the Trustee under this Section 10.02 is in excess of the total, determined by the Trustee, which would have been required to be deposited with the Trustee on such date in respect of the remaining unpaid Defeased Bonds in order to satisfy subclause (b)(ii) of this Section 10.02, the Trustee shall, if requested by the City in Written Certificate, sell specified Defeasance Obligations and transfer the amount of such excess as directed by the City; or (ii) the City directs the Trustee in Written Certificate to sell and re-invest specified Defeasance Obligations as directed by the City;

then before any such excess is so transferred or any such Defeasance Obligations sold and re-invested, as applicable, the Trustee shall have received a report, of an independent firm of certified public accountants or a financial consulting firm of recognized standing in the field of municipal bonds, to the effect that the amount of money and the principal of and interest when due on the Defeasance Obligations remaining on deposit with the Trustee after such transfer or sale or re-investment, as applicable, shall be sufficient to pay when due the Debt Service due and to become due on said unpaid Defeased Bonds on or prior to the redemption or maturity date thereof, as the case may be.

(f) Except as otherwise provide Section 10.02, neither Defeasance Obligations nor moneys deposited with the Trustee pursuant to this Section 10.02 nor principal or interest payments on any such Defeasance Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust by the Trustee solely for, the payment of the Debt Service on the Defeased Bonds; provided that any cash received from such principal or interest payments on such Defeasance Obligations deposited with the Trustee (i) to the extent such cash will not be required at any time for such purpose as determined by the Trustee, shall be transferred as directed by the City, and (ii) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable and as directed by the City, be reinvested by the Trustee in Defeasance Obligations maturing at times and in amounts sufficient to pay when due the Debt Service due on said remaining unpaid Defeased Bonds on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be transferred as directed by the City.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 Liability of Authority Limited to Revenues.** Notwithstanding anything in this Indenture or in the Bonds contained, the Authority shall not be required to advance any moneys derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

**Section 11.02 Limitation of Rights to Parties and Bond Owners.** Nothing in this Indenture or in the Bonds 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 Indenture 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 Trustee, the City, the Authority and the Owners of the Bonds.

**Section 11.03 Funds and Accounts.** Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of Section 5.06 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary to perform its obligations hereunder. The Trustee shall deliver by electronic notification/access a monthly accounting to the Authority and to the City of the funds and accounts held hereunder; provided, that the Trustee shall not be obligated to deliver an accounting for any fund or account that has had no activity since the last reporting date and that has a balance of zero.

**Section 11.04 Unclaimed Funds.** Notwithstanding any provisions of this Indenture, and subject to applicable provisions of State law, any moneys held by the Trustee in trust for the payment of the principal of, premium, if any, or interest on, any Bonds and remaining unclaimed for two (2) years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption as provided in this Indenture), if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the City free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the City as aforesaid, the Trustee shall (at the written request and cost of the City) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof. Thereafter, the Owner of such Bond shall look only to the City for payment and then only to the extent of the amount so returned to the City without any interest thereon, and the Trustee shall have no responsibility with respect to such money.

During any period in which the Trustee holds such unclaimed money, the Trustee shall not be required to invest such money; nonetheless if the Trustee should invest such money any earnings on such amounts shall be remitted to the City as such earnings are realized.

**Section 11.05 Waiver of Notice; Requirement of Mailed Notice.** Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice shall be required to be given by mail, such requirement shall be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

**Section 11.06 Destruction of Bonds.** Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Authority of any Bonds, the Trustee shall, in lieu of such cancellation and delivery, destroy such Bonds as may be allowed by law, and at the written request of the Authority or the City the Trustee shall deliver a certificate of such destruction to the Authority.

**Section 11.07 Severability of Invalid Provisions.** If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

**Section 11.08 Notices.** All written notices to be given under this Indenture 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 telephone, (b) after deposit in the United States mail, postage prepaid, upon receipt, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority:     Public Facilities Financing Authority of the City of San Diego  
                                     c/o City of San Diego  
                                     Office of the City Clerk  
                                     202 C Street, 2<sup>nd</sup> Floor  
                                     San Diego, California 92101  
                                     Phone: (619) 553-400020  
                                     Fax: (619) 553-4045

Copy to: City Attorney's Office  
1200 Third Avenue  
San Diego, California 92101  
Attention: Deputy City Attorney – Finance  
Phone: (619) 236-6220  
Fax: (619) 236-7215

If to the City: City of San Diego  
Department of Finance  
202 C Street, 9<sup>th</sup> Floor  
San Diego, California 92101  
Attention: Chief Financial Officer  
Phone: (619) 236-5941  
Fax: (619) 236-6606

If to the Trustee: Wilmington Trust, National Association  
650 Town Center Drive, Suite 600  
Costa Mesa, California 92626-7121  
Attention: Corporate Trust Department  
Phone: (714) 384-4152  
Fax: (714) 384-4151

The City, the Authority and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

#### **Section 11.09 Evidence of Acts of Owners.**

(a) Any request, direction, consent or other instrument provided hereby to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Trustee, Authority and City, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(1) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(2) The ownership of Bonds shall be proved by the Registration Books.

Nothing in this Section shall be construed as limiting the Trustee to the proof herein specified, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient including, without limitation, an affidavit evidencing beneficial ownership of Bonds while the Bonds are held in book-entry only system.

(b) Any action taken or suffered by the Trustee pursuant to any provision hereof, upon the request or with the assent of any person who at the time is the Owner of any Bond or Bonds, shall be conclusive and binding upon all future Owners of the same Bond or Bonds.

(c) Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

**Section 11.10 Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in the Indenture, shall be a legal holiday or a day on which the Authority, the City, the Trustee or banking institutions in the State are authorized by law or otherwise to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which the Authority, the City, the Trustee or such banking institutions are authorized by law or otherwise to remain closed, with the same force and effect as if done on the nominal date provided in the Indenture, and no interest shall accrue for the period after such nominal date.

**Section 11.11 Credit Enhancement Providers.** If any credit enhancement is provided for a Series of Bonds or for specific Bonds, the Authority may in the Supplemental Indenture under which such Bonds are issued provide any or all of the following rights to the provider of the credit enhancement, as the Authority shall deem to be appropriate:

(1) the right to make requests of, direct or consent to the actions of the Trustee or to otherwise direct proceedings provided in Articles VII and IX of this Indenture, to the same extent and in place of the Owners of the Bonds which are secured by its credit enhancement, and for such purposes the provider of such credit enhancement shall be deemed to be the Owner of such Bonds;

(2) the right to act in place of the Owners of the Bonds which are secured by its credit enhancement for purposes of removing a Trustee or appointing a Trustee under Article VIII hereof; and

(3) the right to receive copies of all notices required to be provided hereunder or under the Lease, to the Trustee, Authority or City.

**Section 11.12 Money Held for Particular Bonds.** The money held by the Trustee for the payment of the interest or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, subject, however, to the provisions of Section 11.04 hereof but without any liability for interest thereon.

**Section 11.13 Waiver of Personal Liability.** No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

**Section 11.14 Successor Is Deemed Included in All References to Predecessor.**

Whenever in this Indenture either the City, the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City, the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 11.15 Execution in Several Counterparts.** This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**Section 11.16 Governing Law.** This Indenture shall be governed by and construed in accordance with the laws of the State.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO has caused this Indenture to be signed in its name by its officers identified below and Wilmington Trust, National Association, as Trustee, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_  
Authorized Officer



**EXHIBIT A**

**FORM OF SERIES 2017\_\_ BOND**

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNLESS THIS SERIES 2017\_\_ BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AS DEFINED IN THE INDENTURE) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SERIES 2017\_\_ BOND EXECUTED AND DELIVERED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.

**PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO  
LEASE REVENUE BONDS, SERIES 2017\_\_  
(BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS)**

*Interest Rate*

*Maturity Date*

*Dated Date*

*CUSIP*

\_\_\_\_\_

\_\_\_\_\_, 2017

**REGISTERED OWNER:**

**PRINCIPAL SUM:**

The Public Facilities Financing Authority of the City of San Diego (the "Authority"), a joint exercise of powers authority duly organized and existing under and pursuant to that certain Amended and Restated Joint Exercise of Powers Agreement, dated as of January 1, 2013 (the "JPA Agreement"), by and between the City of San Diego (the "City") and the Successor Agency to the Redevelopment Agency of the City of San Diego and the Housing Authority of the City of San Diego, and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act") for value received, hereby promises to pay (but only out of the Revenues hereinafter referred to) to the Registered Owner specified above or registered assigns (the "Owner") on the Maturity Date specified above (subject to any right of prior redemption provided for) the Principal Sum specified above, together with interest thereon on each Interest Payment Date. Interest shall accrue on the Series 2017\_\_ Bonds from one Interest Payment Date to, but not including, the next Interest Payment Date; provided, however, that initially such interest shall accrue from the Closing Date to, but not including, the first Interest Payment Date.

The principal of this Series 2017\_\_ Bond shall be payable in lawful money of the United States of America at the designated corporate trust office of the Trustee in upon presentation and surrender of this Series 2017\_\_ Bond or such other place as designated by the Trustee or specified in the Indenture.

Capitalized terms used herein which are not defined herein shall have the meaning set forth in the Indenture (defined below).

If this Series 2017\_\_ Bond is issued in book-entry form, payment of interest on this Series 2017\_\_ Bond due on or before the maturity or prior redemption, thereof shall be made to the person in whose name such Series 2017\_\_ Bond is registered, as of the Record Date preceding the applicable Interest Payment Date, on the registration books kept by the Trustee at its designated corporate trust office, such interest to be paid by check mailed by first class mail on such Interest Payment Date to the Owner at his address as it appears on such books as the Record Date; provided that upon the written request of an Owner by \$1,000,000 or more in aggregate principal amount of the Series 2017\_\_ Bonds received by the Trustee prior to the applicable Record Date, interest shall be paid by wire transfer in immediately available funds. Interest on this Series 2017\_\_ Bond shall be payable in lawful money of the United States of America and shall be calculated on the basis of a 360-day year of twelve 30-day months.

This Series 2017\_\_ Bond is one of a duly authorized issue of bonds of the Authority designated as its "Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements)" (the "Series 2017\_\_ Bonds") in the aggregate principal amount of \$[AMOUNT], issued under and pursuant to the provisions of an Indenture, dated as of [DATE] 1, 2017 (the "Indenture"), by and between the Authority and Wilmington Trust, National Association, as trustee (the "Trustee").

The Series 2017\_\_ Bonds are limited obligations of the Authority and are payable, as to interest thereon and principal thereof, solely from the revenues derived from Base Rental Payments paid by the City for the use and occupancy of the Leased Premises (as defined in the Lease) as long as the City has such use and occupancy of the Leased Premises, and amounts on deposit in the funds, accounts and subaccounts established under the Indenture (other than amounts on deposit in any Rebate Fund), all as set forth in the Indenture ("Revenues"). The Authority has leased the Leased Premises to the City pursuant to the Facilities Lease, dated as of [DATE] 1, 2017 (the "Lease"), and pursuant to the Lease the City has agreed to pay Base Rental Payments to the Trustee for the use and occupancy of the Leased Premises. All the Series 2017\_\_ Bonds are equally and ratably secured in accordance with the terms and conditions of the Indenture by a pledge of the Revenues, which Revenues shall be held in trust for the security and payment of the interest on and principal of the Series 2017\_\_ Bonds as provided in the Indenture.

The Series 2017\_\_ Bonds are special, limited obligations of the Authority and do not constitute a debt, liability or obligation of the City or of the State of California (the "State") or any political subdivision thereof and neither the faith and credit of the City nor the State are pledged to the payment of the principal of or interest on the Series 2017\_\_ Bonds. The Authority has no taxing power.

Reference is hereby made to the: (1) Indenture and any and all amendments thereof and supplements thereto, for a description of the terms under which the Series 2017\_\_ Bonds are issued, the provisions with regard to the nature and extent of the Revenues, and the rights of the Owners of the Series 2017\_\_ Bonds; and (2) Lease and any and all amendments thereof and supplements thereto, for a description of the terms under which the City is required to make Base Rental Payments to the Trustee, copies of which are on file at the office of the Secretary of the Authority and at the designated corporate trust office of the Trustee. All of the terms of the Indenture are hereby incorporated herein and constitute a contract between the Authority and the Owner of this Series

2017\_\_ Bond, to all the provisions of which the Owner of this Series 2017\_\_ Bond, by acceptance hereof, agrees and consents. Each Owner hereof shall have recourse to all of the provisions of the Indenture and shall be bound by all of the terms and conditions thereof.

The Authority has agreed and covenanted that, for the payment of the interest on and the principal of this Series 2017\_\_ Bond and any Bonds authorized by the Indenture when due, there has been created and will be maintained by the Trustee special funds into which all Revenues shall be deposited, and the Authority has allocated such Revenues solely to the payment of the interest on and principal of the Bonds, and the Authority will pay promptly when due the interest on and the principal of this Series 2017\_\_ Bond and any other Bonds authorized by the Indenture out of said special funds, all in accordance with the terms and provisions set forth in the Indenture.

The Series 2017\_\_ Bonds are subject to redemption as provided in the Indenture.

Reference is made to the Indenture for the transfer provisions and restrictions applicable to the Series 2017\_\_ Bonds.

The Authority and the Trustee may deem and treat the Owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest hereon and principal hereof and for all other purposes, whether or not this Series 2017\_\_ Bond shall be overdue, and neither the Authority nor the Trustee shall be affected by any notice or knowledge to the contrary; and payment of the interest on and principal of this Series 2017\_\_ Bond shall be made only to such Owner, which payments shall be valid and effectual to satisfy and discharge liability on this Series 2017\_\_ Bond to the extent of the sum or sums so paid.

The rights and obligations of the Authority and of the Owners of the Series 2017\_\_ Bonds may be amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such amendment shall (1) extend the fixed maturity of this Series 2017\_\_ Bond, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon or extend the time of payment of interest thereon, without the consent of the Owner of this Series 2017\_\_ Bond, (2) reduce the percentage of the Series 2017\_\_ Bonds the consent of the Owners of which is required to effect any such modification or amendment, or (3) permit the creation of any lien on the Revenues and other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture except as permitted in the Indenture, or (4) deprive the Owners of the Series 2017\_\_ Bonds of the lien created by the Indenture on such Revenue and other assets, without the consent of the Owners of all the Bonds then Outstanding.

If the Authority shall pay or cause to be paid or there shall otherwise be paid to the Owners of all Outstanding Series 2017\_\_ Bonds the interest thereon and the principal thereof at the times and in the manner stipulated herein and in the Indenture, then the registered owners of such Series 2017\_\_ Bonds shall cease to be entitled to the pledge of the Revenues as provided in the Indenture, and all agreements, covenants and other obligations of the Authority to the registered owners of such Series 2017\_\_ Bonds under the Indenture shall thereupon cease, terminate and become void and be discharged and satisfied.

This Series 2017\_\_ Bond shall not be entitled to any benefit, protection or security under the Indenture or become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been manually executed and dated by the Trustee.

It is hereby certified that all acts and proceedings required by law necessary to make this Series 2017\_\_ Bond, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal limited obligation of the Authority have been done and taken, and have been in all respects duly authorized.

**IN WITNESS WHEREOF**, the Public Facilities Financing Authority of the City of San Diego has caused this Series 2017\_\_ Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Chair and attested to by the manual or facsimile signature of its Secretary, and has caused this Series 2017\_\_ Bond to be dated the Dated Date specified above.

PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO

By \_\_\_\_\_  
Chair

ATTEST:

By \_\_\_\_\_  
Secretary

## **FORM OF CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This is one of the Series 2017\_\_ Bonds described in the within mentioned Indenture which has been authenticated and registered on \_\_\_\_\_.

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_  
Authorized Officer

## **OPINION OF BOND COUNSEL**

The following is a true copy of the text of the opinion rendered to the City by Stradling Yocca Carlson & Rauth, a Professional Corporation, as Bond Counsel to the City, in connection with the original issuance of the Series 2017\_\_ Bonds. That opinion is dated as of the date of the original issuance of the Series 2017\_\_ Bonds and is premised on the transcript of proceedings examined and the law in effect on the date of such original issuance. A signed copy of that opinion is on file in the office of the Trustee.

Wilmington Trust, National Association, as Trustee

[Here Insert Opinion]

### **[FORM OF ASSIGNMENT OF THE SERIES 2017\_\_ BONDS]**

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_, whose tax identification number is \_\_\_\_\_, the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

\_\_\_\_\_

Dated: \_\_\_\_\_

NOTE: The signature to this Assignment must correspond with the name as written upon the face of the Series 2017\_\_ Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_

NOTE: The signature must be guaranteed by an eligible guarantor institution.

**EXHIBIT B**

**FORM OF COSTS OF ISSUANCE FUND REQUISITION**

To:     Wilmington Trust, National Association

Attn: Corporate Trust Department

Re:     *Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds,  
Series 2017\_\_ (Balboa Park Parking Related Public Improvements)*

*Requisition No.* \_\_\_\_\_

The undersigned, on behalf of The City of San Diego (the "City"), hereby requests payment, from the Costs of Issuance Fund identified above, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for Costs of Issuance in connection with the issuance of the Series 2017\_\_ Bonds identified above, as reflected in the related invoice(s) attached hereto. The payee(s), the purpose and the amount of the disbursement requested are as follows:

<i>Payee</i>	<i>Purpose</i>	<i>Amount</i>
[name and address]		\$
		Total   \$

The undersigned hereby certify that each obligation mentioned herein has been properly incurred, is a proper charge against the Costs of Issuance Fund and has not been the basis of any previous disbursement from the Costs of Issuance Fund. A copy of the bill or statement for each obligation mentioned herein is attached hereto.

Dated: \_\_\_\_\_, \_\_\_\_\_

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Authorized Officer-Debt Management

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Authorized Officer-Comptroller

**EXHIBIT C**

**FORM OF CONSTRUCTION FUND REQUISITION**

To:     Wilmington Trust, National Association

Attn: Corporate Trust Department

Re:     *Public Facilities Financing Authority of the City of San Diego*  
          *Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public*  
          *Improvements)*

Requisition No. \_\_\_\_\_

The undersigned, on behalf of The City of San Diego, hereby requests payment from the Construction Fund funded with proceeds of the Series 2017\_\_ Bonds identified above, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for Construction Costs, as reflected in the related invoice(s) attached hereto. The payee(s), the purpose and the amount of the disbursement requested are as follows:

<i>Payee</i>	<i>Purpose</i>	<i>Amount</i>
[name and address]		\$
	Total	\$

The undersigned hereby certify that each obligation mentioned herein has been properly incurred, is a proper charge against the Construction Fund and has not been the basis of any previous disbursement from the Construction Fund. A copy of the bill or statement for each obligation mentioned herein is attached hereto.

Dated: \_\_\_\_\_, \_\_\_\_\_

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Public Works Director [or his designee]

By: \_\_\_\_\_  
Comptroller [or his designee]



**EXHIBIT D**  
**FEE SCHEDULE OF TRUSTEE**

\$ \_\_\_\_\_  
**PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE CITY OF SAN DIEGO  
LEASE REVENUE BONDS  
SERIES 2017\_\_  
(BALBOA PARK PARKING RELATED PUBLIC IMPROVEMENTS)**

**CONTINUING DISCLOSURE CERTIFICATE**

This Continuing Disclosure Certificate (this “Certificate”) is executed and delivered by the City of San Diego (the “City”) as of \_\_\_\_\_ 1, 2016 in connection with \$\_\_\_\_\_ aggregate principal amount of Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2017\_\_ (Balboa Park Parking Related Public Improvements) (the “Series 2017\_\_ Bonds”). The Series 2017\_\_ Bonds are being issued pursuant to the terms of the Indenture (as defined herein). The City hereby covenants and agrees as follows:

1. Purpose of Certificate. This Certificate is being executed and delivered by the City on behalf of the Authority for the benefit of the Bondowners and Beneficial Owners of the Series 2017\_\_ Bonds and in order to assist the Participating Underwriters in complying with the Rule (as defined below). The City is the only Obligated Person (as defined in the Rule) for the Series 2017\_\_ Bonds.

2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Certificate unless otherwise defined in this Section, the following capitalized terms have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Certificate.

“*Authority*” means the Public Facilities Financing Authority of the City of San Diego.

“*Beneficial Owner*” means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2017\_\_ Bonds (including persons holding Series 2017\_\_ Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2017\_\_ Bonds for federal income tax purposes.

“*Commission*” means the Securities and Exchange Commission.

“*Dissemination Agent*” means the City and any Person designated by the City to serve as Dissemination Agent.

“*Indenture*” means the Indenture, dated as of \_\_\_\_\_ 1, 2017, by and between the Authority and the Trustee, as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions thereof.

“*MSRB*” means the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system.

“*Notice Event*” means any of the events listed in Section 5(a) and (b) of this Certificate.

“*Participating Underwriters*” means any of the original purchasers of the Series 2017\_\_ Bonds required to comply with the Rule in connection with the offering of the Series 2017\_\_ Bonds.

“*Official Statement*” means the Official Statement dated \_\_\_\_\_, 2017, prepared and distributed in connection with the initial sale of the Series 2017\_\_ Bonds.

“*Person*” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“*Rule*” means paragraph (b)(5) of Rule 15c2-12 adopted by the Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including any official interpretations thereof issued either before or after the effective date of this Certificate which are applicable to this Certificate.

“*Trustee*” means Wilmington Trust, National Association, or any successor trust under the Indenture.

### 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent (if other than the City) to, not later than April 10 each year (or the next succeeding business day, if that day is not a business day) (the “Filing Date”) after the end of the City’s fiscal year (which currently ends June 30th), commencing with the report for the fiscal year ending June 30, 20\_\_, provide to the MSRB, in a format prescribed by the MSRB, copies of an Annual Report which is consistent with the requirements of Section 4 of this Certificate. As of the date of this Certificate, the format prescribed by the MSRB is the Electronic Municipal Market Access (“EMMA”) system. Information regarding requirement for submissions to EMMA is available at [emma.msrb.org](http://emma.msrb.org).

The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the City’s fiscal year changes, it shall give notice of such change in the same manner as for a Notice Event under subsection 5(c).

(b) Not later than 15 business days prior to the Filing Date for providing the Annual Report to the MSRB, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If the City is unable to provide to the MSRB an Annual Report by the Filing Date, the City shall, in a timely manner, send a notice to the MSRB in such electronic format as prescribed by the MSRB.

(c) The Dissemination Agent (if other than the City) shall:

(i) determine each year prior to the date for providing the Annual Report the format for filing with the MSRB; and

(ii) file a report with the City certifying that the Annual Report has been provided pursuant to this Certificate, stating the date it was provided to the MSRB.

4. Content of Annual Reports. The City's Annual Report shall contain or include by reference the following:

(a) The audited financial statements of the City for the fiscal year most recently ended, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board and reporting standards as set forth by the State Controller in "State of California Accounting Standards and Procedures for Counties." If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to subsection 3(a) of this Certificate, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) To the extent not included in the financial statements, the following types of information will be provided in one or more reports:

(i) An update to the information generally in the form presented in Table A-3 (titled "City of San Diego General Fund Operating Budget Summary") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

(ii) An update to the information generally in the form presented in Table A-4 (titled "Assessed Valuation") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

(iii) An update to the information generally in the form presented in Table A-5 (titled "Secured Tax Levies and Collections") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

(iv) An update of the information generally in the form presented in Table A-8 (titled "City of San Diego Schedule of Funding Progress") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

(v) An update for the information generally in the form presented in Table A-9 (titled "City of San Diego Pension Contribution") of Appendix A to the Official Statement, for the most recently completed Fiscal Year.

(vi) An update to the information generally in the form presented in Table A-11 (titled "Schedule of Funding Progress (DB OPEB Plan)") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

(vii) An update to the information generally in the form presented in Table A-15 (titled "City of San Diego General Fund Lease Payments") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

(viii) An update to the information generally in the form presented in Table A-16 (titled "City of San Diego General Fund Supported Obligations") of Appendix A to the Official Statement for the most recently completed Fiscal Year.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which

have been submitted to the MSRB. The City shall clearly identify each such other document so included by reference.

The contents, presentation and format of the Annual Reports may be modified from time to time as determined in the judgment of the City to conform to changes in accounting or disclosure principles or practices and legal requirements followed by or applicable to the City or to reflect changes in the business, structure, operations, legal form of the City or any mergers, consolidations, acquisitions or dispositions made by or affecting the City; provided that any such modifications shall comply with the requirements of the Rule.

5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2017\_\_ Bonds, in a timely manner not in excess of ten (10) Business Days after the occurrence of such Notice Event to the MSRB through EMMA:

- (i) principal and interest payment delinquencies;
- (ii) unscheduled draws on debt service reserves reflecting financial difficulties<sup>1</sup>;
- (iii) unscheduled draws on credit enhancements reflecting financial difficulties<sup>2</sup>;
- (iv) substitution of credit or liquidity providers, or their failure to perform<sup>2</sup>;
- (v) adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability or Notices of Proposed Issue (IRS Form 5701-TEB);
- (vi) tender offers;
- (vii) defeasances;
- (viii) rating changes<sup>3</sup>; and
- (ix) bankruptcy, insolvency, receivership or similar event of the City (such event being considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding

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<sup>1</sup> Without limiting its reporting obligation, the City advises that it has not established a debt service reserve fund for the Series 2017\_\_ Bonds.

<sup>2</sup> Without limiting its reporting obligation, the City advises that it has not obtained or provided any credit enhancements or credit or liquidity providers for the Series 2017\_\_ Bonds.

<sup>3</sup> Does not include rating changes related to credit enhancement added by a bondholder. In addition, the City's obligation to provide notice of any rating change shall be deemed to be satisfied if the applicable rating agency files such change with EMMA pursuant to the "automated data feeds" that have been established by the MSRB.

under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City).

(b) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2017\_\_ Bonds, if material, in a timely manner not in excess of ten (10) Business Days after the occurrence of such Notice Event to the MSRB through EMMA:

(i) non-payment related defaults;

(ii) Unless described in Section 5(a)(v), other notices or determinations with respect to the tax status of the Series 2017\_\_ Bonds, or other events affecting the tax status of the Series 2017\_\_ Bonds;

(iii) modifications to rights of the holders of the Series 2017\_\_ Bonds;

(iv) bond calls<sup>4</sup>;

(v) release, substitution or sale of property securing repayment of the Series 2017\_\_ Bonds;

(vi) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets thereof, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; and

(vii) appointment of a successor or additional trustee or the change of name of a trustee.

(c) If the City determines that knowledge of the occurrence of a Notice Event under subsection (b) above would be material under applicable federal securities laws, the City shall promptly file, or cause to be filed, a notice of such event with the MSRB through EMMA. Notwithstanding the foregoing, notice of Notice Events described in subsections (a)(vii) and (b)(iv) above need not be given under this subsection (c) any earlier than the notice, if any, of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.

6. Termination of Reporting Obligation. The City's obligations under this Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Series 2017\_\_ Bonds. If such termination occurs prior to the final maturity of the Series 2017\_\_ Bonds, the

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<sup>4</sup> Any scheduled redemption of Series 2017\_\_ Bonds pursuant to mandatory sinking fund redemption requirements does not constitute a Notice Event within the meaning of the Rule.

City shall give notice of such termination in the same manner as for a Notice Event under subsection 5(c).

7. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligation under this Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent, if other than the City, shall not be responsible in any manner for the content of any notice or report prepared by the City pursuant to this Certificate. The initial Dissemination Agent shall be the City.

8. Amendment; Waiver. Notwithstanding any other provision of this Certificate, the City may amend this Certificate, and any provision of this Certificate may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of subsection 3(a), Section 4 or Section 5, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2017\_\_ Bonds, or the type of business conducted;

(b) The undertakings, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the issuance of the Series 2017\_\_ Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (1) is approved by the Owners majority of outstanding principal amount of the Series 2017\_\_ Bonds, in the same manner as provided in the Indenture for amendments to the Indenture with the consent of the Bondowners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Bondowners or Beneficial Owners of the Series 2017\_\_ Bonds.

In the event of any amendment or waiver of a provision of this Certificate, the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Notice Event under subsection 5(c), and (ii) the Annual Report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

9. Additional Information. Nothing in this Certificate shall be deemed to prevent the City from disseminating any other information, including the information then contained in Appendix A to the City's official statements relating to debt issuances, using the means of dissemination set forth in this Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Notice Event, in addition to that which is required by this Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Notice Event in addition to that which is specifically required by

this Certificate, the City shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Notice Event.

10. Default. In the event of a failure of the City to comply with any provision of this Certificate, any Bondowner or Beneficial Owner of the Series 2017\_\_ Bonds may commence an action in a court of competent jurisdiction in San Diego, California, seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Certificate; provided that any Beneficial Owner seeking to require the City to comply with this Certificate shall first provide at least 30 days' prior written notice to the City of the City's failure, giving reasonable detail of such failure, following which notice the City shall have 30 days to comply. A default under this Certificate shall not be deemed an Event of Default under the Indenture with respect to the Series 2017\_\_ Bonds, and the sole remedy under this Certificate in the event of any failure of the City to comply with this Certificate shall be an action to compel performance, and no person or entity shall be entitled to recover monetary damages under this Certificate.

11. Duties Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Certificate.

12. Beneficiaries. This Certificate shall inure solely to the benefit of the City, the Dissemination Agent the Bondowners and Beneficial Owners from time to time of the Series 2017\_\_ Bonds, and shall create no rights in any other person or entity.

13. Governing Law. This Certificate shall be governed by the laws of the State of California and the federal securities laws.



IN WITNESS WHEREOF, the City of San Diego has executed this Continuing Disclosure Certificate as of the date first set forth herein.

CITY OF SAN DIEGO

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Mary Lewis, Chief Financial Officer