

(v) any non-application or misapplication by the Trustee or otherwise of the proceeds of any Drawing;

(vi) payment by the Bank under the Letter of Credit to the person entitled thereto against presentation of a draft or certificate which does not comply with the terms of the Letter of Credit, provided that such payment shall not have been the result of the gross negligence or willful misconduct of the Bank;

(vii) the surrender or impairment of security for the performance or observance of any of the terms of any Related Document;

(viii) the transfer of the Letter of Credit, provided that such transfer shall not have been the result of the gross negligence or willful misconduct of the Bank;

(ix) any breach of contract or other dispute involving the Authority, the Trustee, any beneficiary or any transferee of the Letter of Credit (or any persons or entities for whom the Trustee, any such beneficiary or any such transferee may be acting), the City, the holders of the Bonds or any other person or entity; or

(x) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing which is not the result of the gross negligence or willful misconduct of the Bank.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF THE CITY

SECTION 7.01. Representations and Warranties of the City. The City hereby represents and warrants as follows:

(a) Organization, Powers, Etc. The City (i) is a municipal corporation duly organized and validly existing under and by virtue of its charter and the Constitution and the laws of the State of California, (ii) has full power and authority to own its properties and carry on its business as now conducted and (iii) has full power and authority to execute (or adopt, if applicable), deliver and perform its obligations under the Related Documents to which it is a party.

(b) Authorization, Absence of Conflicts, Etc. The execution (or adoption, if applicable), delivery and performance of the Related Documents and the issuance of the Bonds (i) have been duly authorized or approved by the City, (ii) do not and will not conflict with, or result in violation of any provision of law or any order, rule or regulation of any court or other agency of government and (iii) do not and will not conflict with, result in a violation of or constitute a default under, the Indenture, the Lease, the Sublease or any other resolution, agreement or instrument to which the City is a party or by which the City or any of its property is bound.

(c) Governmental Consent or Approval. The execution (or adoption, if applicable), delivery and performance of the Related Documents and the issuance of the

Bonds do not and will not require registration with, or the consent or approval of, or any other action by, any Federal, state or other governmental authority or regulatory body other than those which have been made or given and are in full force and effect (except for any federal securities laws or Blue Sky regulations, as to which no representation is given).

(d) Binding Obligations. The Related Documents to which the City is a party are legal, valid and binding obligations of the City, enforceable against the City in accordance with their terms subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally.

(e) Litigation. There is no action or investigation pending and served or, to the actual knowledge of the Authorized Representatives of the City, threatened against the City before any court or administrative agency which questions the validity of any act or the validity of any proceeding taken by the City in connection with the Related Documents or wherein an unfavorable decision, ruling or finding could result in a Material Adverse Change.

(f) Financial Condition. The City's audited financial statements which have been furnished to the Bank have been prepared in conformity with generally accepted accounting principles (except as noted therein) and accurately present, in all material respects, the financial condition of the City as of the dates thereof and there has been no material adverse changes in the business or affairs of the City since the date of such financial statements.

(g) Amendments. None of the Related Documents has been amended except by such amendments or supplements as have been delivered to the Bank prior to execution by it of this Agreement.

(h) Security. The Bank has a valid and enforceable pledge and assignment of the Base Rental Payments and the Additional Rental, subject to the provisions of the Indenture.

(i) No Default. The City is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in the Indenture, the Lease or the Sublease or, to the best of the City's knowledge, any other resolution, agreement or instrument to which it is a party which would have an adverse effect on the ability of the City to perform its obligations under the Related Documents or which would affect the enforceability hereof or thereof.

(j) Arbitrage Matters. The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer whose arbitrage certifications may not be relied upon.

(k) Fees Are Additional Rental. The amounts payable by the City to the Bank pursuant to Sections 2.02 and 2.03 hereof constitute Additional Rental under the Sublease.

(l) Unreimbursed Amount and Interest Are Base Rental Payments or Additional Rental. The Unreimbursed Amount and all interest which may accrue thereon pursuant to the terms of this Agreement constitute either Base Rental Payments or Additional Rental under the Sublease and an amount equal to the then fair rental value of the Leased Property plus the Excess Amount will be available to pay the obligations of the City hereunder, to the extent set forth in the Sublease.

(m) Disaster Relief Funds. Under existing federal, state and local law, the City is eligible for federal, state and local disaster relief funds, respectively, to the extent provided by, and subject to the terms and conditions of, such laws, to repair or reconstruct portions of the improvements on the Leased Property if damaged by an earthquake or other disaster or emergency in the event a federal, state or local disaster or emergency is declared.

(n) Complete and Correct Information. All information, reports and other papers and data with respect to the City furnished to the Bank or its counsel by the City were, taken in the aggregate and at the time the same were so furnished, complete and correct in all material respects. No fact is known to the City which materially and adversely affects or in the future may (so far as it can foresee) materially and adversely affect the business, assets or liabilities, financial condition, results of operations of the City, or any of its business prospects which has not been set forth in the financial statements referred to in Section 7.01(f) above or in such information, reports, papers and data or otherwise disclosed in writing to the Bank by the City. When taken in the aggregate, no document furnished or statement made by the City in connection with the negotiation, preparation or execution of any Related Document contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading.

## ARTICLE VIII

### AFFIRMATIVE COVENANTS OF THE CITY

Until the termination of this Agreement and the payment in full to the Bank of all amounts payable to the Bank hereunder, the City hereby covenants and agrees that it will:

#### SECTION 8.01. Reports and Other Information.

(a) Notice of Default. As promptly as practicable after an Authorized Representative of the City shall have obtained knowledge of the occurrence of an Event of Default or an event which, with the lapse of time or notice or both, would become an Event of Default, provide to the Bank the written statement of the City setting forth the details of each such event and the action which the City proposes to take with respect thereto.

(b) Annual Reports. Within one hundred eighty (180) days after the end of each fiscal year of the City, provide to the Bank audited financial statements of the City and unaudited financial statements of the Leased Property, in both cases consisting of a balance sheet of the City and the Leased Property as at the end of such fiscal year and a statement of cash flows and a statement of income and retained earnings of the City and the Leased Property for such fiscal year, setting forth in comparative form the corresponding figures (if any) for the preceding fiscal year, all in reasonable detail and, in the case of the audited financial statements, accompanied by an unqualified opinion of a nationally recognized independent certified public accounting firm stating that they have been prepared in accordance with generally accepted accounting principles consistently applied. The audited financial statements shall be accompanied by a certificate of no Event of Default from the Director of Finance of the City addressed to the Bank in substantially the form attached hereto as Exhibit B.

(c) Official Statements. Within thirty (30) days of the issuance or sale of any securities by the City, payment of which are secured by the City's General Fund, with respect to which an offering circular or official statement is prepared, provide the Bank with a copy of such offering circular or official statement.

(d) Notice of Adverse Change. Notify the Bank as soon as practicable, but in no event later than ten (10) days after an Authorized Representative of the City acquires actual knowledge, of the occurrence of (i) the filing of a complaint against the City in any court or administrative agency, where the amount claimed is in excess of \$10,000,000, or (ii) any other event which, in the reasonable judgment of the City, is likely to have a material adverse effect on the financial condition or operations of the City.

(e) Insurance. The City shall file or cause to be filed with the Bank annually, by December 31 of each year, a certificate setting forth (i) a description in reasonable detail of the insurance then in effect, including any self-insurance fund maintained, pursuant to the requirements of Section 8.07 hereof and that the City has complied in all respects with the requirements of this Section 8.01(e), and (ii) whether during such year any loss has been incurred relating to the Leased Property and, if so, the amount of insurance proceeds, including the proceeds of any self-insurance fund, covering such loss and specifying the reasonable and necessary costs of repair, reconstruction or replacement thereof. In addition, annually no later than November 30 of each year, the City shall deliver to the Bank the report by either the independent accountants which provide the audit report on the City's annual audited financial statements or by an Independent Insurance Consultant, as selected by the City, as to the appropriateness of the reserving methods and practices employed by the City in funding the self-insurance funds, and any changes recommended by the report shall promptly be implemented by the City.

(f) Other Information. Provide to the Bank such other information respecting the business affairs, financial condition and/or operations of the City, as the Bank may from time to time reasonably request.

SECTION 8.02. Operating Budget. Take such action as may be necessary to include all Base Rental Payments and Additional Rental due under the Sublease in its operating budget for each fiscal year after the date of issuance of the Bonds.

SECTION 8.03. Inspections; Discussion. Permit the Bank, or its representatives, at any reasonable time during normal business hours and from time to time at the request of the Bank and at the Bank's expense (to the extent that the City has the legal ability to permit access thereto) to visit and inspect the properties of the City relating to the Leased Property or the Project; to examine and make copies of and take abstracts from the records and books of account of the City with respect to the Leased Property or the Project; and to discuss the affairs, finances and accounts of the City with the appropriate officers of the City; provided, that if required by the City, the Bank shall, as a condition to being permitted by the City to make or conduct any such visit, inspection, examination or discussion, certify to the City that the same is being made or conducted solely in order to assist the Bank in evaluating its position as issuer of the Letter of Credit.

SECTION 8.04. Sources of Payments. Make, or cause to be made, such payments from the sources and in the manner provided in this Agreement, the Indenture and the Sublease, subject to the limitations contained herein and therein, as are necessary to provide for the payment of the principal of and interest on the Unreimbursed Amount and the principal amount of and accrued interest on the Bonds when due.

SECTION 8.05. Taxes and Liabilities. Pay all its indebtedness and obligations for borrowed money promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default; provided that the City shall have the right to defer payment of taxes, assessments and governmental charges or levies so long as (i) it is contesting the validity of such obligations by appropriate legal action which serves to stay enforcement of such obligations or of any lien securing such obligations, and (ii) it has obtained a bond, insurance or other security, if any, required in order to contest such taxes, assessments, governmental charges or levies.

SECTION 8.06. Operation and Maintenance of Leased Property. Maintain and preserve the Leased Property and all buildings, facilities and equipment constituting any part of the Leased Property in conformity with prudent business practice with respect to facilities of like size and character. The City shall from time to time make all necessary and proper repairs, renewals and replacements to the properties of the Leased Property, so that at all times business carried on in connection with the Leased Property shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and shall operate the Leased Property, or cause the Leased Property to be operated, in an efficient and economical manner, consistent with the protection of the Bank and the Holders of the Bonds and shall not commit or allow any waste with respect to the Leased Property.

SECTION 8.07. Maintenance of Insurance. At all times insure the Leased Property against such risks as are customarily insured against with respect to similar facilities and against loss or damage from such hazards, against loss of use of the Leased Property, and risks to the person and property of others as are usually insured or reserved against by those with rights and interests in projects similar to the Leased Property. The foregoing shall be satisfied if the City maintains the insurance described in Section 6.03 of the Sublease.

SECTION 8.08. Redemption of Bank Bonds. In the event that the City elects to redeem Bonds in accordance with the provisions of the Indenture, direct the Trustee to select Bank Bonds for redemption prior to selecting any other Bonds for redemption.

SECTION 8.09. Keeping of Books. Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the City in accordance with generally accepted accounting principles consistently applied.

SECTION 8.10. Performance and Compliance with Other Covenants. Perform and comply with each of the covenants and obligations set forth in the Indenture, the Sublease and any other Related Documents to which it is a party.

SECTION 8.11. Investments. Comply with all of the provisions of the California Government Code regarding investments, as may be amended from time to time, and, in addition, shall not:

(a) enter into reverse repurchase agreements or similar agreements solely for the purpose of investment, in an amount at any time greater than 20% of the total of the City's unleveraged investment portfolio; or

(b) knowingly maintain any of the City's investment portfolio in a pool of investments managed by another Person whose investment practices would result in the indirect violation of the limitation set forth in subsection (a) above; or

(c) invest in any instrument or execute any agreement commonly known as a derivative (such as by way of example, an inverse floater or any other variable rate or floating rate security the interest rate on which is not determined on a basis designed to result in a value of the security approximately equal to par) or invest in any other security with a derivative embedded in it (such as, by way of example, a structured note), except to the extent that any such investments or agreements do not exceed 20% of the City's unleveraged investment portfolio and except that for the purposes of this subsection the term "derivative" shall not include principal or interest strips of direct obligations of the United States which, if held to maturity, would yield to the City the face amount of such security; provided, however, notwithstanding the foregoing provision, the City shall have the right to enter into transactions, agreements or investments without regard to the limitations set forth in this subsection (c) for legitimate hedging purposes with respect to the City's investment portfolio, consistent with sound investment practices for investors similarly situated.

In determining whether the City's investment in a pool of investments described in subsection (b) above would cause a violation of subsection (a) above, the amount of the City's

investment in the pool will be considered borrowed money for the purposes of subsection (a) above in an amount equal to the product of the amount of such investment times the percentage by which such pool is leveraged.

SECTION 8.12. Disaster Relief. In the event the Leased Property is damaged by an earthquake, or other disaster or emergency as declared by a local government, the Governor of the State of California, or the President of the United States, apply to the Office of Emergency Services (“OES”), the Federal Emergency Management Agency (“FEMA”), or other similar agency, for federal, state and local disaster relief funds in the maximum amount permitted under federal, state and local law, respectively, and apply all such designated funds received towards the repair or reconstruction of the Leased Property.

SECTION 8.13. Completion of the Project. Enter into contracts for construction of the Rose Bowl Improvements and the City Hall Improvements in accordance with the City’s normal contracting process. The City shall complete construction of the Rose Bowl Improvements and the City Hall Improvements in a timely manner, and shall issue additional bonds if necessary to ensure completion of the Rose Bowl Improvements and the City Hall Improvements. In no event, however, may the completion of the Rose Bowl Improvements and the City Hall Improvements be made in such a manner as to inhibit the City from continuing the full annual appropriation of funds for payment of all Base Rental Payments and Additional Rental due under the Sublease.

SECTION 8.14. Covenants Contained in Sublease. The covenants set forth in the Sublease are incorporated herein as covenants by the City to the Bank; provided that to the extent that the terms of any covenant contained in the Sublease conflict with the terms of the same or a similar covenant contained herein, the provisions of the covenant contained herein shall govern.

## ARTICLE IX

### NEGATIVE COVENANTS OF THE CITY

Until the termination of this Agreement and the payment in full to the Bank of all amounts payable to the Bank hereunder, the City hereby covenants and agrees that it will not:

SECTION 9.01. Compliance with Laws, Etc. Violate any laws, rules, regulations, or governmental orders to which it is subject which violation involves a reasonable likelihood of materially and adversely affecting its financial condition, business or results of operations with respect to the Leased Property.

SECTION 9.02. Sale of Interest in the Leased Property. As provided in the Sublease and except in accordance with the provisions of this Section 9.02, or Sections 9.05, 9.06 and 9.08 hereof, without the prior written consent of the Bank, which may be withheld in its sole and absolute discretion, sell, lease, or otherwise dispose of its interest in the Leased Property or any portion thereof. The City may assign, transfer or sublease any and all of the Leased Property or its other rights under the Sublease to subtenants and concessionaires, provided that (a) the rights of any assignee, transferee or sublessee shall be subordinate to all rights of the Authority and the Bank hereunder and under the Sublease (including without limitation, the right to receive or

make decisions with respect to insurance proceeds), (b) no such assignment, transfer or sublease shall relieve the City of any of its obligations hereunder, (c) the assignment, transfer or sublease shall not result in a breach of any covenant of the City contained in the Sublease or herein and (d) any such assignment, transfer or sublease shall by its terms expressly provide that fair rental value of the Leased Property for all purposes shall be first allocated to the Sublease, as the same may be amended from time to time before or after any such assignment, transfer or sublease. Further, the City agrees that so long as any sums are due or may be due to the Bank hereunder, it shall not exercise any of its rights regarding Substitution or Removal as provided in Section 2.06 of the Sublease.

SECTION 9.03. Amendments. Without the prior written consent of the Bank, consent or agree to or permit any rescission of, termination of or amendment to or otherwise take any action under or in connection with the Lease, the Sublease, the Indenture or any Related Document.

SECTION 9.04. Appointment of Agents. Without the prior written consent of the Bank, which consent shall not be unreasonably withheld, appoint, remove or consent to the appointment or removal of the Trustee, the Remarketing Agent or the Tender Agent.

SECTION 9.05. Other Obligations. Except as provided in Section 9.02 hereof, incur, assume or permit to exist any obligations with payment supported by the fair rental value of the Leased Property unless all of the following conditions are satisfied:

- (a) the fair rental value of the Leased Property for any Lease Year must equal or exceed 100% of the Maximum Annual Debt Service of all Bonds and other City Obligations supported by the fair rental value of the Leased Property; and
- (b) payment of any other obligations supported by the fair rental value of the Leased Property must be subordinate to or on a parity with the Base Rental Payments and Additional Rental.

SECTION 9.06. Right to Re-Enter or Sublet. Without the prior written consent of the Bank, which may be withheld in its sole and absolute discretion, grant to any party any remedy which allows reentry upon the Leased Property or confers upon any party the right to sublet the Leased Property.

SECTION 9.07. Official Statements. Without the prior written consent of the Bank, circulate or distribute the Official Statement or any supplement thereto without the prior approval of the Bank of the provisions contained therein relating to the Bank, the Letter of Credit and this Agreement.

SECTION 9.08. Abandon or Vacate Leased Property. Without the prior written consent of the Bank, abandon or vacate the Leased Property.



## ARTICLE X

### DEFAULT AND REMEDIES

SECTION 10.01. Events of Default. Each of the following events shall constitute an “Event of Default” under this Agreement:

(a) default shall be made in the payment of any Unreimbursed Amount or any interest accrued thereon when due;

(b) default shall be made in the payment of any amount payable under Section 2.02 or 2.03 hereof when due;

(c) default shall be made by the City in the performance or observance of any other of the covenants, agreements or conditions on its part contained in Section 8.02, 8.07, 8.08, 8.14, 9.02, 9.03, 9.04, 9.05, 9.06 or 9.08 hereof;

(d) default shall be made by the City in the performance or observance of any other of the covenants, agreements or conditions on its part contained herein which are not specifically provided for by another subsection of this Section 10.01 within twenty (20) days after receipt of notice from the Bank; provided, that if (i) such failure cannot be cured with the payment of money and cannot with diligence be cured within such 20-day period and (ii) the City is diligently and in good faith proceeding to cure, and the City so certifies to the Bank in writing as to each of items (i) and (ii) above, then the period for cure shall be extended for the period necessary for the City to cure such failure, but not more than 60 days without the written consent of the Bank;

(e) any Event of Default (as defined in the Indenture) shall occur and be continuing under the Indenture, and such default shall continue unremedied for any period of grace specified therein;

(f) there shall occur the dissolution or liquidation of the City or the filing by the City of a voluntary petition in bankruptcy, or the commission by the City of any act of bankruptcy, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar act in any jurisdiction which may be now in effect or hereafter enacted;

(g) an order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the City’s interest in the Leased Property, or any part thereof, or of the rents, fees, charges or other revenues therefrom, or if such order or decree, having been entered without the consent or acquiescence of the City;

(h) there shall occur the dissolution or liquidation of the Authority or the filing by the Authority of a voluntary petition in bankruptcy, or the commission by the Authority of any act of bankruptcy, or adjudication of the Authority as a bankrupt, or

assignment by the Authority for the benefit of its creditors, or the entry by the Authority into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Authority in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar act in any jurisdiction which may be now in effect or hereafter enacted;

(i) an order or decree shall be entered, with the consent or acquiescence of the Authority, appointing a receiver or receivers of the Authority's interest in the Leased Property, or any part thereof, or of the rents, fees, charges or other revenues therefrom, or if such order or decree, having been entered without the consent or acquiescence of the Authority;

(j) any representation or warranty made by the City under or in connection with this Agreement shall prove to have been incorrect in any material respect when made;

(k) any of the Related Documents shall cease to be valid and binding on the City or shall be declared to be null and void or the validity or enforceability thereof shall be contested by the City or a proceeding shall be commenced by any governmental agency or authority having jurisdiction over the City or the Authority seeking to establish the invalidity or unenforceability thereof, or the City or the Authority shall deny that it has any or further liability or obligation under any Related Document to which it is a party; or

(l) the pledge of the various Funds and Accounts held by the Trustee and the Base Rental Payments and Additional Rental under the Indenture shall for any reason cease to be fully enforceable with the priority required thereunder.

SECTION 10.02. Remedies. Upon the occurrence and continuance of an Event of Default, the Bank may, in its sole discretion, but shall not be obligated to:

(a) declare that all Unreimbursed Amounts, whether or not accelerated, shall thereafter bear interest at the Default Rate until paid in full;

(b) enforce the rights and obligations of the City under the Sublease as if the Bank was a party thereto (subject to any limitations therein);

(c) give notice to the Trustee of the occurrence of an Event of Default hereunder and request a mandatory tender of the Bonds in accordance with the provisions of Section 4.10(b) of the Indenture; and/or

(d) exercise any other remedies available to the Bank at law or in equity.

## **ARTICLE XI**

### **CONTINUING OBLIGATION**

This Agreement is a continuing obligation of the City and shall, until the later of the Expiration Date and the date on which all amounts due and owing to the Bank hereunder shall have been paid in full, (i) be binding upon the City, its successors and assigns, and (ii) inure to the benefit of and be enforceable by the Bank and its successors, transferees and assigns; provided, that the City may not assign all or any part of this Agreement without the prior written consent of the Bank.

## **ARTICLE XII**

### **NATURE OF BANK'S DUTIES**

The City assumes all risks of the acts or omissions of the Authority, the Remarketing Agent, the Tender Agent, the Trustee and any transferee of the Letter of Credit with respect to its use of the Letter of Credit or any amounts made available thereunder; provided, however, this assumption with respect to the Bank is not intended to, and shall not, preclude the City from pursuing such rights and remedies as it may have against the Trustee, the Tender Agent or the Remarketing Agent at law or under any other agreement. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or any amounts made available thereunder or for any acts or omissions of the Authority, the Remarketing Agent, the Tender Agent, the Trustee and any transferee of the Letter of Credit in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; (d) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign the Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (e) errors, omissions, interruptions or delays in transmission or delivery of any messages, by telex, mail, cable, telegraph, facsimile or otherwise, whether or not they have been in cipher, including any Drawing; or (f) any consequences arising from causes beyond the control of the Bank, including, without limitation, any acts of courts and governmental authorities; provided, however, that clauses (b), (c) and (d) above, shall not be construed to excuse the Bank from liability to the City to the extent of any direct damages (as opposed to consequential or punitive damages, which, to the extent permitted by law, are hereby expressly waived by the City) suffered that are caused by the Bank's gross negligence or willful misconduct (as finally determined by a court of competent jurisdiction). In furtherance of the foregoing and without limiting the generality thereof, the parties agree that with respect to documents presented which appear on their face to be in substantial compliance with the terms hereof, the Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in compliance in any material respect with the terms hereof; provided, however, that the foregoing shall not be construed to excuse the Bank from liability to the City to

the extent of any direct damages (as opposed to consequential or punitive damages, which, to the extent permitted by law, are hereby expressly waived by the City) suffered that are caused by the Bank's gross negligence or willful misconduct (as finally determined by a court of competent jurisdiction). The City assumes all risks associated with the acceptance by the Bank of documents received by telecommunication, it being agreed that the use of telecommunication devices is for the benefit of the City and that the Bank assume no liabilities or risks with respect thereto.

### ARTICLE XIII

#### MISCELLANEOUS

SECTION 13.01. Amendments and Non-Waiver. This Agreement may be amended only upon the written agreement of the City and the Bank, and the City may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the City shall first obtain the prior written consent of the Bank. An Event of Default may be waived in writing by the Bank and any such Event of Default which has been waived in writing by the Bank shall not be deemed to be continuing during the period (including any retroactive period) for which the waiver is effective, but such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure to perform or observe any obligation hereunder. No failure or delay on the part of the Bank in exercising any right, remedy, power or privilege under this Agreement or under any of the Related Documents and no course of dealing between the City or any other person and the Bank shall operate as a waiver hereof or thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any of the Related Documents preclude any other or further exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the Related Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law or in equity or otherwise. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Bank to any other or further action in any circumstances without notice or demand. The Bank may remedy any default by the City hereunder or with respect to any other Person in a reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the City.

SECTION 13.02. Survival of Representations and Warranties. All agreements, representations and warranties of the City contained in this Agreement and in any certificates delivered pursuant hereto shall survive the execution and delivery of this Agreement and the issuance of the Letter of Credit hereunder, and the agreements contained in Article V and Section 13.03 hereof shall survive payment of the reimbursement to the Bank of any payments or disbursements under the Letter of Credit and the termination of this Agreement.

SECTION 13.03. Expenses. The City shall also pay as Additional Rental under the Sublease directly to the Bank the following amounts:

- (a) on demand, any and all costs and expenses of the Bank, including without limitation reasonable attorneys' fees and disbursements, incurred or paid by the Bank in connection with (A) the negotiation of the Sublease, the preparation and negotiation of

the Reimbursement Agreement, and the issuance of the Letter of Credit (whether or not the Bonds are issued or the transactions contemplated by the Reimbursement Agreement are closed), (B) the closing of the transactions contemplated hereby on the Issuance Date, (C) enforcing the City's obligations to the Bank under the Sublease, and (D) costs of inspection of the Leased Property by the Bank or its agents in connection with item (C);

(b) on demand, any and all costs and expenses of the Bank, including without limitation reasonable attorneys' fees and disbursements, incurred or paid by the Bank in connection with (A) the filing, recording, amendment, maintenance, renewal or cancellation of the Letter of Credit, this Agreement or any other Related Documents, (B) any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of the Letter of Credit, the Reimbursement Agreement and any other documents which may be delivered in connection with the Sublease, (C) any and all amounts which the Bank has paid or incurred relative to the Bank's curing of any Event of Default under the Reimbursement Agreement, the Sublease or the Indenture; provided that the Bank may not cure an Event of Default involving the failure to make Base Rental Payments by paying the same themselves, (D) the enforcement of the Reimbursement Agreement or the Sublease, or (E) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Bank from paying any amount under the Letter of Credit, in the case of an action described in this subclause (E), until the City makes payment of, or provision for payment other than from the Letter of Credit, the Bonds then Outstanding which are supported by the Letter of Credit or delivers a Substitute Credit Facility and the action described in this subclause (E) is terminated (provided the Bank agrees to use reasonable efforts to have the action terminated as quickly as possible); and

(c) on demand, any and all costs and expenses of the Bank, including without limitation reasonable attorneys' fees and disbursements, incurred or paid by the Bank in connection with the Bank's compliance with the City's requests for continuing disclosure pursuant to Section 13.19 hereof.

SECTION 13.04. Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default, the Bank is hereby authorized at any time and from time to time, without notice to the City (any such notice being expressly waived by the City) and to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank or any affiliate thereof to or for the credit or the account of the City against any and all of the obligations of the City now or hereafter existing under this Agreement, irrespective of whether or not the Bank shall have made any demand hereunder.

SECTION 13.05. Notices. All notices, requests and other communications hereunder shall be in electronic or written form (including bank wire, telegram, telecopier, telex or similar writing) and shall be given to the party to whom addressed, at its address or telecopier or telex number set forth below, or such other address or telecopier or telex number as such party may hereafter specify for the purpose by notice to the other parties listed below. Each such notice, request or communication shall be effective (i) if given by telex, telecopy or other electronic

means, when such communication is transmitted to the address specified below and the appropriate answerback is received, (ii) if given by mail, three (3) days after such communication is deposited in the United States mail with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below:

If to the City, to: City of Pasadena  
P.O. Box [\_\_\_\_\_] ]  
117 East Colorado Boulevard, 5<sup>th</sup> Floor  
Pasadena, California 91105  
Attention: Director of Finance  
Facsimile No.: (626) 744-7093

If to the Bank  
with respect to  
credit matters, to: Citibank, N.A.  
390 Greenwich Street  
New York, New York 10013  
Attention: Muni Credit Surveillance 8<sup>th</sup> Floor  
Facsimile No.: (212) [\_\_\_\_]-[\_\_\_\_\_]

If to the Bank  
with respect to operations  
/money transfer issues, to: Citibank, N.A.  
c/o Citicorp North America, Inc.  
3800 Citibank Center, Building B, Third Floor  
Tampa, Florida 33610  
Attention: Standby Letter of Credit Department  
Facsimile No.: (813) 604-7187

If to the Trustee, to: Deutsche Bank National Trust Company  
101 California Street, 46th Floor  
San Francisco, California 94111  
Attention: Corporate Trust Department  
Facsimile No.: (415) 617 4270

All notices given by telephone, telex, telecopier or other electronic means shall be confirmed in writing as promptly as practicable. The provisions of this Section 13.05 shall have no application to the procedures for drawing or making a demand for payment under the Letter of Credit.

SECTION 13.06. Participation. The Bank shall have the right at any time to sell, assign, grant or transfer participation interests in, all or part of the Letter of Credit and the obligations of the City under the Related Documents to any other banking institutions or pension funds without the consent of, or notice to, the City or the Authority. Each banking institution or pension fund purchasing such a participation shall in the discretion of the Bank have all rights of the Bank hereunder to the extent of the participation purchased; provided, however, that the Bank shall remain responsible for the performance of its obligations under the Letter of Credit, and the City

shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under the Related Documents. Without limiting the foregoing, the City agrees that each Participant shall be entitled to the full benefit of the rights provided to the Bank in Section 2.03 hereof; provided that no Participant may recover any amount under Section 2.03 hereof in excess of the amount which would have been recoverable by the Bank if such participation had not been sold. The Bank may disclose to any Participants or prospective Participant any information or other data or material in the Bank's possession relating to any Related Document, the City, the Leased Property, and the Project, without the consent of or notice to the City; provided that if required by the City, the Participant or prospective Participant shall certify to the City that the information provided by the Bank is being used solely to assist the Participant or prospective Participant in evaluating its position as a Participant in the Letter of Credit.

SECTION 13.07. Satisfaction Requirement. If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to the Bank, the determination of such satisfaction shall be made by the Bank in its reasonable judgment exercised in good faith.

SECTION 13.08. Governing Law. PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (OR ANY SUCCESSOR STATUTE THERETO), THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW; PROVIDED, HOWEVER, THE POWERS AND OBLIGATIONS OF THE CITY HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE FEDERAL LAW WITHOUT REGARD TO CHOICE OF LAW RULES.

SECTION 13.09. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

SECTION 13.10. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

SECTION 13.11. Headings. Article and section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

SECTION 13.12. Integration. This Agreement is intended to be the final agreement between the parties hereto relating to the subject matter hereof and this Agreement and any agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof.

SECTION 13.13. No Reduction in Payments. All payments made by or on behalf of the City to the Bank hereunder or under any Related Document shall be made free and clear of, and without reduction for or on account of, any present or future stamp or other taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected, withheld or assessed by any governmental or taxing authority of the United States, the State of California or any political subdivision of the State of California, excluding income taxes now or hereafter imposed on the Bank (such nonexcluded taxes being called "Taxes"). If any Taxes are required to be withheld from any amounts payable to the Bank hereunder, the amounts so payable to the Bank shall be increased to the extent necessary to yield to the Bank (after payment of all Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in the Sublease. Upon request by the City, the Bank will provide the City with any documents required to be delivered by the Bank to enable the City to obtain a reduction of, or exemption from withholding of, any Tax. Whenever any Tax is payable by the City, as promptly as possible thereafter, the City shall send the Bank an original official receipt showing payment thereof.

SECTION 13.14. Waiver of Jury Trial; Dispute Resolution; Consent to Jurisdiction. TO THE EXTENT PERMITTED BY LAW, THE CITY AND THE BANK HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT EITHER MAY HAVE UNDER THE LAW OF ANY JURISDICTION TO ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT. TO THE EXTENT THE WAIVER IN THE PRECEDING SENTENCE IS NOT PERMITTED BY LAW, THE CITY AND THE BANK HEREBY AGREE TO RESOLVE ANY DISPUTE RESULTING IN LEGAL ACTION PURSUANT TO THE PROVISIONS FOR REFERENCE AND TRIAL BY REFEREE (WITHOUT JURY). THE PARTIES AGREE THAT SAID REFEREE SHALL BE A JUDGE FOR ALL PURPOSES (INCLUDING, WITHOUT LIMITATION, (X) RULING ON ANY AND ALL DISCOVERY MATTERS AND MOTIONS AND ANY AND ALL PRETRIAL OR TRIAL MOTIONS, (Y) SETTING A SCHEDULE OF PRETRIAL PROCEEDINGS, AND (Z) MAKING ANY OTHER ORDERS OR RULINGS A SITTING JUDGE OF THE APPLICABLE COURT WOULD BE ENTITLED TO MAKE IN ANY ACTION OR PROCEEDINGS BEFORE SUCH COURT. ANY DECISION OF THE REFEREE SHALL BE APPEALABLE TO THE TO THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH DECISION WOULD BE APPEALABLE IF RENDERED BY A JUDGE OF THE APPLICABLE COURT. NOTHING IN THIS SECTION SHALL PREJUDICE THE RIGHT OF EITHER PARTY TO OBTAIN PROVISIONAL RELIEF OR OTHER EQUITABLE REMEDIES AS SHALL OTHERWISE BE AVAILABLE JUDICIALLY PENDING REFERENCE OF A DISPUTE TO A REFEREE AS PROVIDED HEREIN. IF ANY COURT OF COMPETENT JURISDICTION DETERMINES THAT THE JURY TRIAL WAIVER OR THE APPOINTMENT OF A REFEREE IS IMPERMISSIBLE OR OTHERWISE INEFFECTIVE, THEN THE PARTIES HERETO AGREE THAT ANY DISPUTE BETWEEN THE PARTIES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE EXPEDITIOUSLY RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION.

With respect to any suit, action or proceedings relating to this Agreement, the Official Statement or the Related Documents, the City and the Bank each irrevocably submits to the



nonexclusive jurisdiction of the courts of the State of New York located in the Borough of Manhattan in New York City and the United States District Court located in the Borough of Manhattan in New York City and the courts of the State of California located in the City of Los Angeles and the United States District Court located in the City of Los Angeles.

SECTION 13.15. Usury. The Bank shall not be entitled to receive payment of interest hereunder in excess of the maximum rate permitted by applicable law. If the Bank receives less interest during any period than it would be entitled to receive hereunder but for the applicability of a maximum legal rate of interest, during any subsequent period in which the rate of interest to which the Bank is otherwise entitled hereunder is less than such maximum legal rate of interest, the Bank shall instead receive interest at a rate equal to the maximum legal rate of interest until the Bank has received, in the aggregate, the amount of interest due the Bank hereunder. In addition, to the extent permitted by applicable law, if the Unreimbursed Amount comes due or is prepaid and the Bank has not received, in the aggregate, the amount of interest due the Bank hereunder, the City shall pay the Bank, upon the coming due or prepayment of such Unreimbursed Amount, the amount of interest due the Bank hereunder and not otherwise paid hereunder or thereunder.

SECTION 13.16. Benefit of Agreement. This Agreement shall be binding upon each party hereto, its successors and permitted assigns, except that the City may not transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the Bank. This Agreement is made and entered into solely for the protection and benefit of the Bank, on its own behalf and on behalf of the Participants, and the City and both of their successors and assigns and no other person shall have any right of action under this Agreement. Any and all claims asserted hereunder may be asserted and only asserted by the City, the Bank, on its own behalf or on behalf of the Participants, and both of their successors and permitted assigns. Any Participation Agreements are not intended to be for the benefit of the City, and the City shall not be, a third party beneficiary thereof. Notwithstanding the foregoing, the Bank may assign and pledge, without the consent of the City, all or any portion of its rights and obligations hereunder and under the other Related Documents, including the Letter of Credit, to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the City to the Bank in accordance with the terms of this Agreement shall satisfy the City's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

SECTION 13.17. Actions. In the event the Bank or any Participant or Subparticipant (each a "Defending Bank") shall commence, appear in or defend any action or proceeding relating to its rights, duties or liabilities under the Reimbursement Agreement, the Sublease or a Related Document, other than an action or proceeding involving a dispute between any Defending Bank and another Defending Bank, to the extent permitted by law, the City will pay the Defending Bank, upon demand, all of the Defending Bank's reasonable out-of-pocket costs, expenses and legal fees and disbursements incurred by the Bank in those actions and proceedings.

SECTION 13.18. Trustee Not Affected. Nothing appearing herein, and no exercise of any rights, remedies or recourse hereunder, shall be construed as limiting any rights, remedies or recourse of the Trustee whatsoever as against any Person, including, without limitation, under the Indenture, applicable law or otherwise.

SECTION 13.19. Bank To Cooperate with the City's Requests for Continuing Disclosure. The Bank agrees that it will comply with all reasonable written requests of the City to provide material public information pertaining to the Bank in connection with the City's provision of continuing disclosure with respect to the Bonds.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

CITY OF PASADENA

By: \_\_\_\_\_  
Title:

CITIBANK, N.A.

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