

FIFTH AMENDMENT TO  
REIMBURSEMENT AGREEMENT

This FIFTH AMENDMENT TO REIMBURSEMENT AGREEMENT (this "Amendment"), is made and entered into as of March [\_\_\_], 2021 by and among CITY OF PASADENA, a municipal corporation and chartered city of the State of California (the "City"), PASADENA PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized under the laws of the State of California (the "Authority"), and BANK OF AMERICA, N.A., a national banking association (the "Bank").

W I T N E S S E T H

WHEREAS, the City, the Authority and the Bank have previously entered into a Reimbursement Agreement, dated as of April 1, 2008, a First Amendment to Reimbursement Agreement, dated as of March 23, 2010, a Second Amendment to Reimbursement Agreement, dated as of March 8, 2012, a Third Amendment to Reimbursement Agreement, dated as of February 27, 2015 and a Fourth Amendment, dated as of March 2, 2018 (collectively, the "Prior Agreement"); and

WHEREAS, the City and the Authority each desires to extend the Stated Expiration Date (as defined in the Prior Agreement) of the Letter of Credit (as defined in the Prior Agreement) and to amend the Prior Agreement as provided herein;

NOW, THEREFORE, in consideration of the foregoing, the premises and mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given thereto in the Prior Agreement.
2. Effectiveness of this Amendment. This Amendment shall become effective as provided herein at the time (the "Amendment Effective Time") on the first date (the "Amendment Effective Date") on which each of the following conditions shall be satisfied or waived by the Bank:
  - (a) Delivery of Amendment. The Bank shall have received a copy of this Amendment duly executed and delivered by the City and the Authority.
  - (b) Incumbency. Receipt by the Bank, on or prior to the Amendment Effective Date, of a certificate of the City certifying the names and true signatures of the officials of the City authorized to sign this Amendment and the other documents to be delivered by the City hereunder.
  - (c) Representations and Covenants of the City; No Defaults. The following statements shall be true and correct on and as of the Amendment Effective Date, and the Bank shall have received a certificate signed by an Authorized City Representative, dated the Amendment Effective Date, stating that:

(i) The representations of the City contained in Article V of the Prior Agreement (other than Sections 5.5 and 5.6) are true and correct in all material respects on and as of the Amendment Effective Date as though made on and as of such date.

(ii) The City has performed or complied with all of its obligations, agreements and covenants to be performed or complied with by it pursuant to the Prior Agreement on or prior to the Amendment Effective Date.

(iii) After giving effect to the execution and delivery of this Amendment, there exists no Default or Event of Default.

(d) Representations and Covenants of the Authority; No Defaults. The following statements shall be true and correct on and as of the Amendment Effective Date, and the Bank shall have received a certificate signed by an authorized office of the Authority, dated the Amendment Effective Date, stating that:

(i) The representations of the Authority contained in Article VI of the Prior Agreement are true and correct in all material respects on and as of the Amendment Effective Date as though made on and as of such date.

(ii) The Authority has performed or complied with all of its obligations, agreements and covenants to be performed or complied with by it pursuant to the Prior Agreement on or prior to the Amendment Effective Date.

(iii) After giving effect to the execution and delivery of this Amendment by the Authority, there exists no Default or Event of Default.

(e) Fees, Costs and Expenses. The Bank and its counsel shall have received payment of all fees, costs and expenses due under the Prior Agreement and the Fee Letter that are to be paid on or prior to the Amendment Effective Date.

(f) No Material Adverse Change. As of the Amendment Effective Date, the Bank, in its sole determination, shall be satisfied that (i) no material adverse change in the financial condition, business, assets, liabilities or prospects of the City since June 30, 20[20] has occurred, and (ii) no law, rule or regulation shall have been enacted, amended, suspended or repealed that would result in a material adverse change of the type described in clause (i).

3. Amendments. At the Amendment Effective Time, the Prior Agreement is hereby amended as follows:

(a) Section 1.1 of the Prior Agreement is hereby amended by the addition of the following definitions which are to be situated therein by alphabetical order:

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“*Fifth Amendment*” means the Fifth Amendment to Reimbursement Agreement, dated March [\_\_\_], 2021, among the City, the Authority and the Bank.

“*Insolvency Proceeding*” means a receivership, insolvency, liquidation, resolution, or similar proceeding.

“*QFC*” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

(b) Section 1.1 of the Prior Agreement is hereby amended by deleting the defined terms “Fee Letter” and Stated Expiration Date” therein and replacing them with the following:

“*Fee Letter*” means that certain Fee Letter dated March [\_\_\_], 2021, between the Bank and the City, and any amendments or modifications thereto.

“*Stated Expiration Date*” means March [\_\_\_], 2023.

(c) Article VII of the Prior Agreement is hereby amended by adding the following Section 7.23 at the end thereof:

“Section 7.23 QFC Provisions. To the extent that the Related Documents provide support, through a guarantee or otherwise, for any agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Related Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) Acknowledgment Regarding Supported QFCs. In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC

Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Related Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Related Documents were governed by the laws of the United States or a state of the United States.

(b) Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings with Respect to Any Supported QFCs. Notwithstanding anything to the contrary in the Related Documents or any other agreement, but without prejudice to the requirements of the preceding paragraph (a), Default Rights under the Related Documents that might otherwise apply to a Supported QFC or any QFC Credit Support may not be exercised against a Covered Party if such Default Rights are related, directly or indirectly, to a BHC Act Affiliate of such Covered Party becoming subject to Insolvency Proceedings, except to the extent such exercise would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a Covered Party has become subject to Insolvency Proceedings, if any party to the Program Documents, any Supported QFC or any QFC Credit Support seeks to exercise any Default Right against such Covered Party with respect to such Supported QFC or such QFC Credit Support, the party seeking to exercise such Default Right shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.”

4. Amendment of the Letter of Credit. At the Amendment Effective Time, the Bank shall execute and deliver to the Trustee a certificate in the form of Annex E to the Letter of Credit extending the Stated Expiration Date to March [\_\_\_\_], 2023.

5. Representations and Warranties. The City makes, as of the Amendment Effective Date, each of the representations and warranties set forth in Article V of the Prior Agreement, after giving effect to this Amendment, and such representations and warranties are, by this reference, incorporated herein as if set forth herein in their entirety, provided that references to “Agreement” shall, for purposes of this paragraph, be deemed to include this Amendment. The Authority makes, as of the Amendment Effective Date, each of the representations and warranties set forth in Article VI of the Prior Agreement, after giving effect to this Amendment, and such representations and warranties are, by this reference, incorporated herein as if set forth herein in their entirety, provided that references to “Agreement” shall, for purposes of this paragraph, be deemed to include this Amendment.

6. Miscellaneous.

(a) The parties hereto acknowledge and confirm that, from and after the date hereof, any reference in the Prior Agreement or in the other Related Documents to the "Agreement" shall mean and refer to the Prior Agreement as amended by this Amendment.

(b) Except as expressly modified by this Amendment, the Prior Agreement shall continue to be and remain in full force and effect in accordance with its terms.

(c) This Amendment may be executed in any number of counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one instrument.

(d) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (OR ANY SUCCESSOR STATUTE THERETO), THIS AMENDMENT 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 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.

(e) The parties agree that the electronic signature of a party to this Amendment shall be as valid as an original signature of such party and shall be effective to bind such party to this Amendment. The parties agree that any electronically signed document (including this Amendment) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

(f) The City agrees to pay the reasonable fees and expenses of counsel to the Bank incurred in connection with this Amendment promptly following presentation of an invoice therefor together with previously unpaid invoices.

*[Remainder of page intentionally left blank.]*

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

**CITY OF PASADENA**

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

ATTEST:

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

**PASADENA PUBLIC FINANCING  
AUTHORITY**

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Michele Beal Bagneris  
City Attorney

APPROVED AS TO FORM:

NORTON ROSE FULBRIGHT US LLP,  
Bond Counsel

\_\_\_\_\_  
Eric Tashman  
Partner

**BANK OF AMERICA, N.A.**

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

Name: Greg S. Bailey

Title: Senior Vice President