



KENSINGTON FIRE PROTECTION DISTRICT

DATE: July 13, 2022

TO: Board of Directors Special Meeting
Kensington Fire Protection District

RE: **Agenda Item 5b**
Public Safety Building Seismic Renovation – Financing Approval

SUBMITTED BY: Bill Hansell, General Manager

Background Info

Bid Process:

At the direction of the Board, District staff worked with NHA Advisors, the District's fiduciary municipal advisor, and Oppenheimer & Co., a registered broker-dealer serving as the District's placement agent, to solicit bids for the financing of the District's proposed public safety building project. Oppenheimer submitted the bid request to 22 financial institutions with a history of purchasing similar financial obligations. Bids were received from five financial institutions, one of which was only a preliminary indicative rate.

The District, in consultation with NHA Advisors, selected Capital One Public Finance ("Capital One") as its financing partner based on a combination of the proposed interest rate and financing terms. The interest rate was locked at 4.07% for a 25-year term, which is shorter than the 30-year assumption that had previously been assumed. Over the life of the loan, the 25-year term reduces interest costs by more than \$400,000 compared to a 30-year financing.

Following the receipt of construction bids for the project, it was determined that an optimal financing amount of \$2.16 million would allow the District to maintain sufficient reserves and meet its on-going operations. Average annual payments are expected to be approximately \$141,000. Additional details regarding the proposed financing are provided in Exhibit A (Good Faith Estimates) to the resolution authorizing the financing.

Legal Structure Overview:

The Board is being asked to approve the financing with Capital One Public Finance and the related legal documents. The financing is structured as a lease/leaseback. The District's obligation to make lease payments will be secured by an annual appropriation from the District's general fund.

Why a lease/leaseback structure? – Statutory constraints on discretionary borrowing by special districts limit how special districts can incur debt without receiving voter approval. There are a few recognized exceptions to this rule and a municipal lease financing is one exception recognized by California courts. Property or equipment leases are not subject to voter approval nor considered debt for purposes of constitutional and statutory law. Special districts have the statutory authority to sell or lease property and the lease financing structure utilizes this authority. Special districts commonly use municipal lease financings to finance capital public improvements.

The documents for this financing are summarized below. A graphical depiction of the leaseback structure is provided as an attachment to this staff report.

Site Lease: Pursuant to the Site Lease, the District leases property to the CSDA Finance Corporation, (the “Corporation”) in order to facilitate the financing of the project. It is anticipated that the District will then lease the property back from the Corporation pursuant to the Lease Agreement described below.

Lease Agreement: Under the Lease Agreement, the District agrees to lease the property back from the Corporation in exchange for the payment by the District of rental payments (representing a principal component and an interest component). The Lease Agreement describes certain covenants, representations and warranties of the District and the Corporation, as well as, among other things: (i) the terms and conditions related to the deposit and application of funds, (ii) the term of the financing, and (iii) provisions related to the lease payments.

Assignment Agreement: The Corporation will assign its right to receive the lease payments as well as the right to enforce said payments to Capital One. As consideration for such assignment, Capital One provides the funding for the project and as such is entitled to receive the assigned lease payments described in the lease agreement.

Memorandum of Lease: This document memorializes and facilitates the recording of the Lease Agreement.

Escrow Agreement: Capital One’s bid requires the loan proceeds to be held in trust by BOK Financial for the benefit of the District.

Next Steps:

The aforementioned legal documents have gone through the review process with the financing team and District Counsel, Meyers Nave. If the Board approves the proposed financing, the financing team will finalize and execute all documents prior to the July 20, 2022 closing date for the financing.

Recommended Action

Approve the District Resolution authorizing the proposed financing with Capital One.

Attachments:

- 1) District Resolution
- 2) Escrow Agreement
- 3) Lease Agreement
- 4) Memo of Lease
- 5) Placement Agent Agreement
- 6) Site Lease

KENSINGTON FIRE PROTECTION DISTRICT

FACILITIES FUNDING UPDATE



NHA | ADVISORS
Financial & Policy Strategies.
Delivered.

July 13, 2022

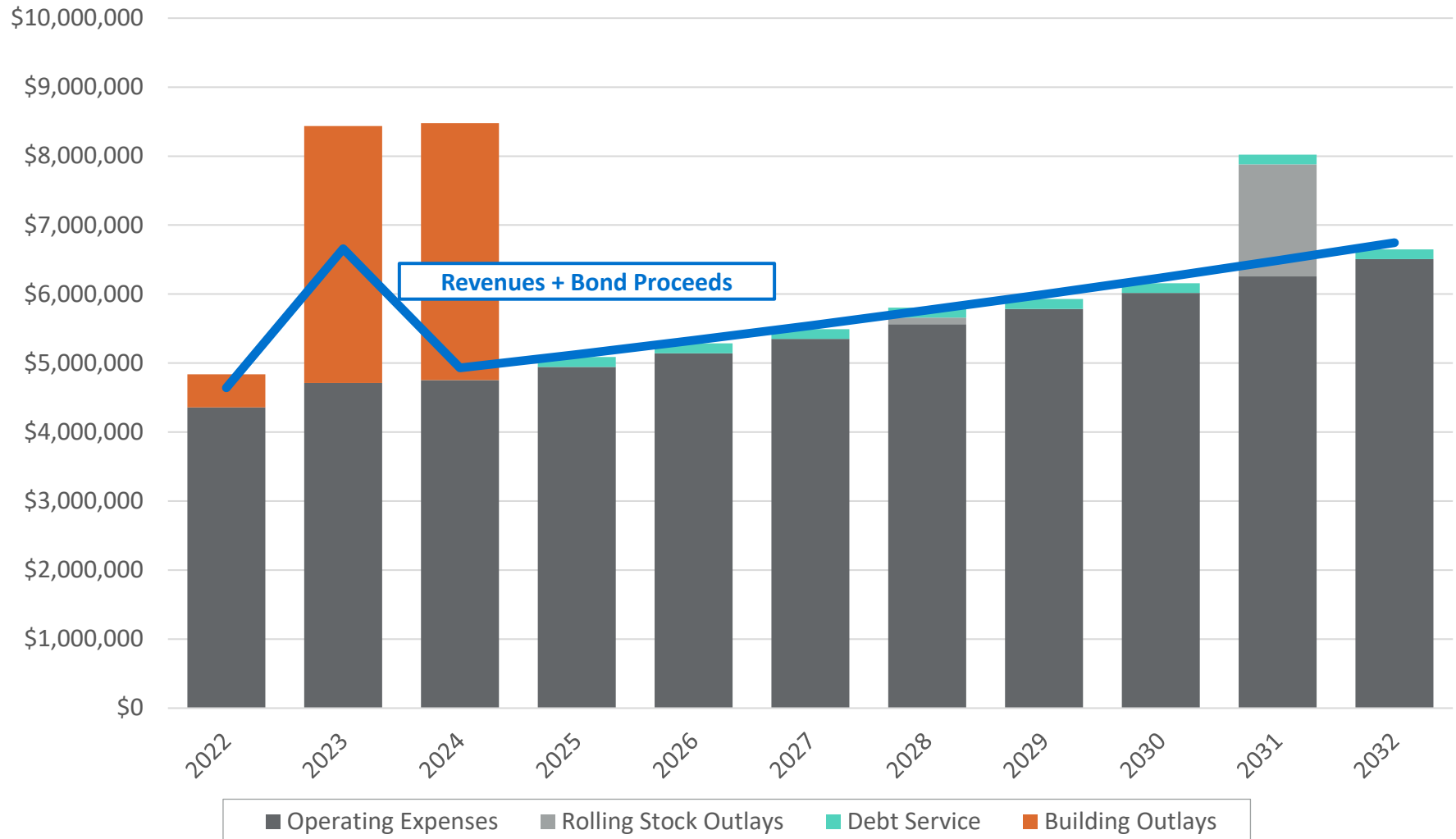
Historical Interest Rates

- ▶ Despite recent uptick, interest rates are low by historical standards



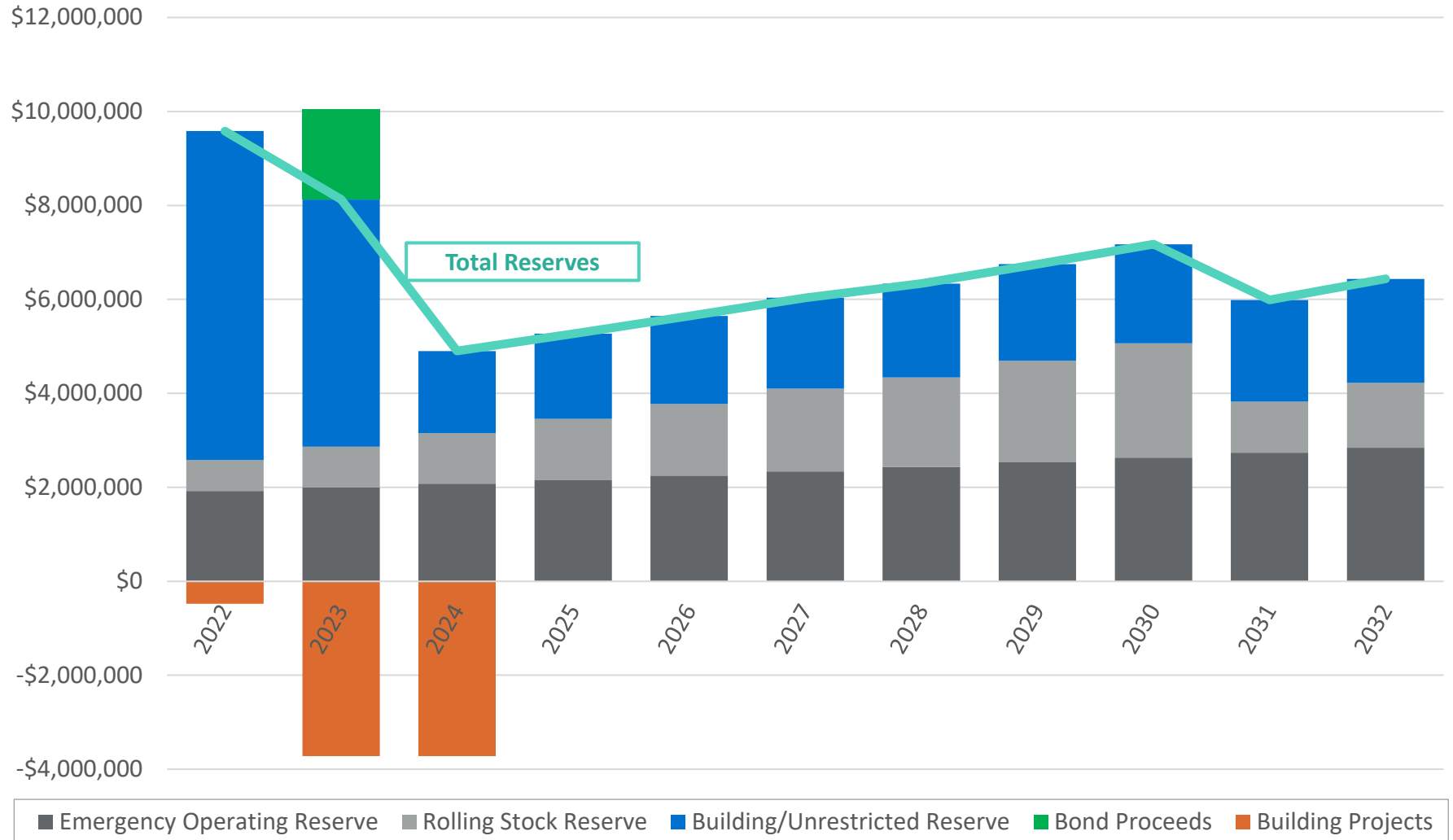
Cash Flows

- ▶ Capital One provided a locked interest rate of 4.07%
- ▶ 25-year term
- ▶ \$141K annual debt service
- ▶ Generates \$1.92M for the project



Reserves

- ▶ Projected to fully fund emergency operating reserve (El Cerrito reserve) & rolling stock reserve
- ▶ Revenues are projected to exceed expenses and reserve set-asides through the life of the loan





RESOLUTION 2022-16

RESOLUTION OF THE KENSINGTON FIRE PROTECTION DISTRICT APPROVING A SITE LEASE, AND A LEASE AGREEMENT; MAKING CERTAIN DETERMINATIONS RELATING THERETO; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Kensington Fire Protection District (the "District") is a fire protection district duly organized and validly existing under the laws of the State of California; and

WHEREAS, in order to provide funds for the financing of the acquisition, construction and installation of certain improvements to real property of the District consisting of the design, engineering, demolition, and reconstruction of the Kensington Fire Protection District Public Safety Building (the "Project"), the District will lease certain real property owned by the District (the "Site") to CSDA Finance Corporation (the "Corporation") under a Site Lease, currently dated as of July 1, 2022, (the "Site Lease") between the District and the Corporation and the Corporation will lease the Site to the District under a Lease Agreement, currently dated as of July 1, 2022 (the "Lease Agreement") between the Corporation and the District; and

WHEREAS, there have been presented at this meeting forms of the Site Lease and the Lease Agreement; and

WHEREAS, Capital One Public Funding, LLC (the "Bank") has issued a term sheet to the District offering to provide a loan to finance the Project; and

WHEREAS, the District desires to appoint NHA Advisors, LLC, as municipal advisor; Oppenheimer & Co. Inc., as placement agent; and Kutak Rock LLP, as special counsel ("Special Counsel"), in connection with the financing of the Project; and

WHEREAS, pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), under certain circumstances, certain obligations the interest on which is exempt from federal income tax under Section 103 of the Code may be designated by the issuer thereof as "qualified tax-exempt obligations," thereby allowing certain financial institutions that are holders of such qualified tax exempt obligations to deduct for federal income tax purposes a portion of such institution's interest expense that is allocable to such qualified tax-exempt obligations, all as determined in accordance with Sections 265 and 291 of the Code; and

WHEREAS, the Board of Directors of the District (the “Board”) wishes to designate the Lease Agreement as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code; and

WHEREAS, the United States Treasury Department has issued Treasury Regulation Section 1.150-2 (the “Reimbursement Regulations”) constituting final regulations with respect to the use of proceeds of a tax-exempt financing for reimbursement purposes and, to comply with the Reimbursement Regulations in the event such reimbursements are deemed necessary, the District intends to declare its official intent to be reimbursed for costs of the Project with proceeds of future taxable or tax exempt borrowings, including but not limited to the Lease Agreement; and

WHEREAS, Senate Bill 450 (Chapter 625 of the 2017-2018 Session of the California Legislature) (“SB 450”) requires that the Board obtain from an underwriter, municipal advisor or private lender and disclose, prior to authorization of the issuance of bonds, including debt instruments such as the Lease Agreement, with a term of greater than 13 months, good faith estimates of the following information in a meeting open to the public: (a) the true interest cost of the lease payments made pursuant to the Lease Agreement (the “Lease Payments”), (b) the sum of all fees and charges paid to third parties with respect to the Lease Agreement, (c) the amount of proceeds of the Lease Agreement expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Lease Agreement, and (d) the sum total of all Lease Payments with respect to the Lease Agreement calculated to the final Lease Payment Date under the Lease Agreement plus the fees and charges paid to third parties not paid with the proceeds of the Lease Agreement; and

WHEREAS, in compliance with SB 450, the Board obtained from the Placement Agent the required good faith estimates and such estimates are disclosed and set forth on Exhibit A attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Kensington Fire Protection District (the “Board”) as follows:

Section 1. Approval of Site Lease. The form of Site Lease, as presented to the District at this meeting, is hereby approved. The President, Vice President, and the General Manager or any other officers duly designated by the District (collectively, the “Officers”) are hereby authorized and directed, for and on behalf of the District, to execute, acknowledge and deliver the Site Lease, in substantially the form presented to the District at this meeting, with such changes therein as such Officers may require or approve, with the advice and approval of the District’s General Counsel and Special Counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. Approval of Lease Agreement. The form of Lease Agreement, as presented to the District at this meeting, along with the Memorandum of Lease, is hereby approved. The Officers are hereby authorized and directed, for and on behalf of the District, to execute, acknowledge and deliver the Lease Agreement, in substantially the form presented to the District at this meeting, with such changes therein as such

Officers may require or approve, with the advice and approval of the District's General Counsel and Special Counsel, such approval to be conclusively evidenced by the execution and delivery thereof; provided that the aggregate principal component of the portion of the Lease Payments (as defined in the Lease Agreement) due under the Lease Agreement shall not exceed \$2,640,000, the scheduled term of the financing does not exceed September 1, 2047 and the initial interest rate is not greater than 4.070% per annum.

Section 3. Approval of Private Placement. The District hereby approves the assignment of the Lease Payments by the Corporation to the Bank, by a private placement pursuant to and in accordance with an assignment agreement.

Section 4. Approval of Consultants. The Board hereby appoints the firms of NHA Advisors, LLC, as municipal advisor; Oppenheimer & Co. Inc., as placement agent; and Kutak Rock LLP, as special counsel, in connection with the proposed transactions described herein. The Board hereby authorizes and directs the President of the Board or the General Manager to execute and deliver an agreement with each of said firms for their respective services, provided that any and all compensation to such firms under the agreement for each firm is payable solely from the proceeds derived from the transactions described herein.

Section 5. Declaration of Official Intent. The District hereby declares its official intent, pursuant to the Reimbursement Regulations, to permit the District to reimburse itself from proceeds of the Lease Agreement in the amount of up to the aggregate principal amount referred to in Section 2 above for certain expenditures for the Project that may have been paid by the District from other available moneys of the District prior to the execution of the Lease Agreement.

Section 6. SB 450 Good Faith Estimates. In accordance with SB 450, good faith estimates of the following have been obtained from NHA Advisors and are set forth on Exhibit A attached hereto: (a) the true interest cost of the lease payments made pursuant to the Lease Agreement, (b) the sum of all fees and charges paid to third parties with respect to the Lease Agreement, (c) the amount of proceeds of the Lease Agreement expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Lease Agreement, and (d) the sum total of all Lease Payments with respect to the Lease Agreement calculated to the final Lease Payment Date under the Lease Agreement plus the fees and charges paid to third parties not paid with the proceeds of the Lease Agreement.

Section 7. Bank Qualified. The Lease Payments due under the Lease Agreement are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The Board hereby finds and determines that the aggregate face amount of all tax exempt obligations (other than private activity bonds) issued by the District (and all subordinate entities thereof) during calendar year 2022 is not expected to exceed \$10,000,000.

Section 8. Official Actions. The Officers are hereby authorized and directed, for and in the name and on behalf of the District, to do any and all things and take any

and all actions which they, or any of them, may deem necessary or advisable in order to consummate the transactions as described herein in connection with the financing of the Project, including but not limited to, entering into an escrow agreement or similar agreement with the Bank and the escrow agent named therein or a custodian agreement with a financial institution to be selected by the District.

Section 9. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Board or by the officers, employees and agents of the District directed toward the financing of the Project for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 10. Effective Date. This Resolution shall take effect immediately upon adoption and the Secretary shall certify to its adoption.

The foregoing resolution was duly passed, approved, and adopted at a regular meeting of the Kensington Fire Protection District on the 13th day of July 2022 by the following vote of the Board.

AYES:
NOES:
ABSENT:
ABSTAIN:

Larry Nagel, President

Janice Kosel, Secretary

ESCROW AGREEMENT

COPF: Capital One Public Funding, LLC
1307 Walt Whitman Road, 3rd Floor
Melville, New York 11747

DISTRICT: Kensington Fire Protection District
217 Arlington Avenue
Kensington, California 94707

ESCROW AGENT: BOKF, NA
200 N. Broadway
Suite 1710
St. Louis. MO 63102

THIS ESCROW AGREEMENT (this "*Escrow Agreement*") is made as of July 1, 2022, between Capital One Public Funding, LLC ("*COPF*"), the Kensington Fire Protection District (the "*District*"), and BOKF, NA, a national banking association, as escrow agent (the "*Escrow Agent*").

CSDA Finance Corporation (the "*Corporation*") and the District have entered into a Site Lease dated as of July 1, 2022 (the "*Site Lease*"), under which the District has agreed to lease certain real property described therein to the Corporation in exchange for an advance rental payment.

The Corporation and the District have entered into a Lease Agreement dated as of July 1, 2022 (the "*Lease Agreement*"), under which the Corporation has agreed to lease the property leased under the Site Lease back to the District, on the terms set forth in the Lease Agreement.

The Corporation has assigned its rights under the Site Lease and the Lease Agreement to Capital One Public Funding, LLC ("*COPF*"), in exchange for an amount equal to the advance rental payment.

The District will use a portion of the funds to be paid as advance rental under the Site Lease to finance the design, engineering, demolition, and reconstruction of the Kensington Fire Protection District Public Safety Building (the "*Project*") that will be constructed by [name of contractor] or other contractors (each a "*Contractor*"). The District will also use a portion of the funds to be paid as advance rental under the Site Lease to pay costs of the transaction and a portion of the interest component of the Lease Payments under the Lease Agreement.

Pursuant to the terms of the Site Lease, the advance rental payment in the amount of \$ _____ (the "*Deposit Amount*") will be deposited with the Escrow Agent in cash to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein. Such deposit, together with all interest and additions received with respect thereto (hereinafter, the "*Escrow Fund*"), is to be applied from time to time to pay the cost of the Project and interest on the Lease Agreement. The Escrow Fund is to be held for the account and benefit of the District, and the District has granted to COPF a security interest in the Escrow Fund.

The parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. **Acceptance of Duties.** The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of the District and shall be applied as expressly set forth herein.

To the limited extent required to perfect the security interest granted by the District to COPF in the cash and negotiable instruments from time to time held in the Escrow Fund, COPF hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of COPF.

2. **Deposit of Funds.** On such day as determined to the mutual satisfaction of the parties, COPF on behalf of the Corporation shall deposit with the Escrow Agent cash in the amount of the Deposit Amount to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Deposit Amount by COPF with the Escrow Agent, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.

3. **Maintenance of Fund.** The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments held in the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by COPF).

4. **Investment of Funds.** The District hereby directs the Escrow Agent to invest the cash held in the Escrow Fund from time to time in Qualified Investments (as hereinafter defined). For the purpose of this paragraph 4, the term "Qualified Investments" means the Federated Treasury Obligation Fund (TOTXX) or, in the event such fund is not at the time available, such other investments as the District may specify in writing, to the extent the same are at the time legal for investment of the funds being invested.

Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and become a part of the Escrow Fund. The Escrow Agent shall have the right to liquidate any investments held in order to make required disbursements under this Escrow Agreement. The Escrow Agent shall have no liability for any loss sustained as a result of any investment made pursuant to the instructions of the District or as a result of any liquidation of any investment prior to its maturity pursuant to the

instructions of the District or the terms of this Escrow Agreement or for the failure of the District to give investment instructions to Escrow Agent.

5. **Escrow Procedure.** COPF and the District hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:

- a. From time to time, the Escrow Agent shall pay Contractors payments then due and payable, or reimburse the District for amounts that it has paid to a Contractor for the Project, upon receipt of the following: (a) a duly executed Payment Request in the form attached as Exhibit A hereto, signed by a District Representative and approved in writing by COPF, (b) the Contractor's invoice(s) specifying the payment(s) described in the request, and (c) any additional documentation required by COPF. An "District Representative" is a person designated on the Incumbency Certificate attached hereto as Exhibit C or on a subsequent Incumbency Certificate of the District actually received and acknowledged by COPF and the Escrow Agent. In addition, the Escrow Agent shall, without further authorization, upon receipt of an invoice from each payee, pay the transactions costs in the amounts and to the parties specified in Exhibit B hereto.

Upon receipt of a written request for payment of funds from the Escrow Fund, COPF and the Escrow Agent are authorized to seek confirmation of such instructions by telephone call-back to any District Representative designated on Exhibit C hereto, and COPF and the Escrow Agent may rely upon the confirmations of anyone purporting to be such District Representative. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by COPF and the Escrow Agent. The parties to this Escrow Agreement acknowledge that such security procedure is commercially reasonable.

It is understood that COPF, the Escrow Agent, and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying number provided by any party hereto to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank.

- b. The Escrow Agent shall, without further authorization, pay to COPF the following amounts (representing the interest component of Lease Payments under the Lease Agreement) on the following dates:

March 1, 2023	\$
September 1, 2023	
March 1, 2024	

- c. If COPF provides to the Escrow Agent (with a copy to the District) written notice of the occurrence of an Event of Default by the District under the Lease Agreement, the Escrow Agent shall thereupon promptly remit to COPF the entire balance of the Escrow Fund.
 - d. Upon receipt by the Escrow Agent of a duly executed Payment Request identified as the final request, the remaining monies in the Escrow Fund shall, first be applied to all reasonable fees and expenses incurred by the Escrow Agent, if applicable, in connection herewith as evidenced by its statement forwarded to COPF and the District; and, second be paid to COPF, for application against the outstanding principal components of Lease Payments (as defined in the Lease Agreement), including prepayment of Lease Payments under the Lease Agreement, as provided therein. If any such amount is used to prepay principal, the Payment Schedule attached to the Lease Agreement will be revised accordingly as specified by COPF.
6. **Use of Agents; Reliance on Counsel.** The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder. The Escrow Agent may consult with counsel, and the written advice of such counsel or an opinion of counsel shall be full and complete authorization and protection for any action taken, suffered or omitted by it in good faith and in accordance with such advice or opinion..
 7. **Compensation.** The Escrow Agent shall be entitled to reasonable compensation as well as reimbursement for its reasonable costs and expenses incurred in connection with the performance by it of service under this Escrow Agreement (including reasonable fees and expenses of Escrow Agent's counsel). The parties hereto agree that escrow fees shall be due and payable in the amount of \$1,400, and such fees shall be paid by COPF.
 8. **Immunities of Escrow Agent.** The Escrow Agent shall have no liability for acting upon any written instruction presented by the District and COPF in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investments made pursuant to Section 4.
 9. **Indemnification of Escrow Agent.** To the extent authorized by law, the District hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to the Escrow Agent's gross negligence or willful misconduct.
 10. **Resignation of Escrow Agent.** The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to the District and COPF, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of COPF and the District. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by COPF and the District. Such notice shall set forth the effective date of the removal. In the event of any

resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by COPF and the District. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to COPF, the District and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by COPF and the District.

11. **Termination of Agreement.** This Escrow Agreement shall terminate upon completion of the disbursement by the Escrow Agent pursuant to COPF's written notice pursuant to Section 5(c) or the District's final Payment Request pursuant to Section 5(d).
12. **Notices.** All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt.
13. **Successors and Assigns.** This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of COPF and the District.
14. **Entire Agreement; Amendment.** This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.
15. **Governing Law.** This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of California.
16. **Construction.** Words used in the singular number may include the plural and the plural may include the singular. The section headings appearing in this Escrow Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and conditions of this Escrow Agreement.
17. **Severability.** If any provision of this Escrow Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Escrow Agreement remain in full force, if the essential terms and conditions of this Escrow Agreement for each party remain valid and enforceable.
18. **Execution in Counterparts.** This Escrow Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
19. **Forms of Documentation.** The parties hereto agree that the transaction described herein may be conducted and related documents (other than notices, which are governed by Section 12) may be received, sent or stored by electronic means. In the absence of actual

knowledge to the contrary, copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

20. **Verification of Information.** The parties acknowledge that, in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act), all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Escrow Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed.

CAPITAL ONE PUBLIC FUNDING, LLC

KENSINGTON FIRE PROTECTION DISTRICT

By: _____

By: _____

BOKF, NA, as Escrow Agent

APPROVED AS TO FORM:

By: _____
Authorized Officer

District Counsel

EXHIBIT A
PAYMENT REQUEST

BOKF, NA (the “*Escrow Agent*”), as escrow agent under the Escrow Agreement dated as of July 1, 2022 (the “*Escrow Agreement*”), between the Kensington Fire Protection District (the “*District*”), Capital One Public Funding, LLC (“*COPF*”), and the Escrow Agent, is hereby requested to pay from the Escrow Fund established and maintained thereunder, to each of the parties designated on the attached Schedule the amount set forth opposite such party’s name. The amount(s) shown is/are due and payable under a contract (or has been paid by and not previously reimbursed to the District) for a portion of the cost of the Project described in the Escrow Agreement.

The undersigned hereby certifies that:

(a) Attached hereto is a duplicate original or certified copy of an invoice, payment request form, or equivalent document relating to the Project;

(b) The amount requested for payment is for costs previously paid or incurred, is now due and owing (or has been paid by the District), and has not been included in any earlier Payment Request;

(c) All necessary permits and approvals required for the portion of the work related to the Project for which payment is requested have been issued and are in full force and effect; and

(d) No Event of Default, as that term is defined in the Lease Agreement, and no event that, with the giving of notice or lapse of time or both, would become an Event of Default, has occurred and is continuing on the date hereof.

Based on the foregoing, Escrow Agent is hereby authorized and directed to pay, or cause to be paid, to the vendor named in the attached invoice, payment request form, or equivalent document (or the District, in the case of reimbursements) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

Date: _____

IF REQUEST IS FINAL REQUEST, CHECK HERE .

Approved:

CAPITAL ONE PUBLIC FUNDING, LLC

**KENSINGTON FIRE PROTECTION
DISTRICT**

By: _____
[name/title]

By: _____
District Representative

SCHEDULE

<u>ITEM</u>	<u>PAYEE</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
1.	[NAME AND ADDRESS]		[general classification]
2.			

EXHIBIT B
TRANSACTION COSTS

<u>ITEM</u>	<u>PAYEE</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
1.			
2.			

EXHIBIT C

INCUMBENCY CERTIFICATE REGARDING DISTRICT REPRESENTATIVES

**Lease Agreement dated as of July 1, 2022, between
CSDA Finance Corporation, as lessor, and Kensington Fire Protection District, as lessee,
and assigned to Capital One Public Funding, LLC**

The undersigned officer of the Kensington Fire Protection District (the "District") hereby certifies that the persons listed below are each designated as an authorized representative of the District for the Escrow Agreement dated as of July 1, 2022 (the "Escrow Agreement"), between the District, Capital One Public Funding, LLC ("COPF"), and BOKF, N.A., as escrow agent (the "Escrow Agent"), including but not limited to initiating and approving transactions under the Escrow Agreement and confirming such approvals through call-backs from COPF and the Escrow Agent relating thereto, all on behalf of the District. Each such person is the current holder of the office or title indicated, and the signature set forth opposite the name of each such authorized representative is the true and correct specimen of such person's signature:

Name/Title/Telephone/Email

Specimen Signature

Name

Title

Telephone#

Email Address

Name/Title/Telephone/Email

Specimen Signature

Name

Title

Telephone#

Email Address

Dated: July 20, 2022

Kensington Fire Protection District

By: _____

Title: _____

LEASE AGREEMENT

Dated as of July 1, 2022

between the

CSDA FINANCE CORPORATION

and the

KENSINGTON FIRE PROTECTION DISTRICT

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease Agreement”), dated as of July 1, 2022, is between the CSDA FINANCE CORPORATION, a non-profit public benefit corporation organized and existing under the laws of the State of California, as lessor (the “Corporation”), and the KENSINGTON FIRE PROTECTION DISTRICT, a fire protection district organized and existing under and by virtue of the laws of the State of California, as lessee (the “District”);

WITNESSETH:

WHEREAS, pursuant to that certain Site Lease, dated as of July 1, 2022 (the “Site Lease”), the District has leased that certain real property situated in the County of Contra Costa, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the “Site”), and those certain improvements thereon (the “Facility” and, with the Site, the “Property”), to the Corporation, all for the purpose of enabling the District to finance the design, engineering, demolition, and reconstruction of the Kensington Fire Protection District Public Safety Building (the “Project”);

WHEREAS, the Corporation proposes to lease the Property back to the District pursuant to this Lease Agreement and to assign all of its rights, title and interest in, to and under this Lease Agreement, including its right to receive lease payments under this Lease Agreement (the “Lease Payments”), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the District and its rights under the Site Lease, to Capital One Public Funding, LLC including its successors and assigns (the “Assignee”), pursuant to that certain Assignment Agreement, dated as of July 1, 2022, between the Corporation and the Assignee; and

WHEREAS, the District and the Corporation have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$ _____ for the purpose of implementing the transaction described above; and

WHEREAS, the District and the Corporation agree to mutually cooperate now and hereafter, to the extent possible, in order to sustain the intent of this Lease Agreement and the bargain of both parties hereto.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained and for other good and valuable consideration, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

Section 1.1. Definitions. All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Lease Agreement.

“Additional Payments” means the amounts specified as such in Section 4.3(b) of this Lease Agreement.

“Applicable Environmental Laws” means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the California Hazardous Waste Control Law (“HWCL”), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), California Health & Safety Code Sections 25300 et seq.; the Porter- Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

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

“Assignee” means (a) initially, Capital One Public Funding, LLC, as assignee of all rights, title and interests of the Corporation hereunder, and (b) any other entity to whom the rights of the Corporation hereunder are assigned, including subsequent assignees of the Assignee, as provided in Section 7.4.

“Assignment Agreement” means the Assignment Agreement, dated as of July 1, 2022, between the Corporation, as assignor of its rights under the Site Lease and this Lease Agreement, and the Assignee, as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

“Bond Counsel” means (a) Kutak Rock LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

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

“Closing Date” means July 20, 2022.

“Corporation” means CSDA Finance Corporation, a non-profit public benefit corporation, organized and existing under the laws of the State of California.

“Corporation Representative” means the Chief Executive Officer or the designee of any such official, or any other person authorized by resolution of the Corporation delivered to the Assignee to

act on behalf of the Corporation under or with respect to the Site Lease, the Lease Agreement and the Assignment Agreement.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the District relating to the authorization and execution of the Lease Agreement, including but not limited to filing and recording fees, fees, charges and disbursements of attorneys, including counsel to the Assignee, counsel to the Corporation, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Lease Agreement, administrative costs of the District and the Corporation incurred in connection with the issuance of the Lease Agreement, expenses of the placement agent of the Lease Agreement, and any other cost, charge or fee in connection with the original issuance of the Lease Agreement, including fees of the California Debt and Investment Advisory Commission.

“Default Rate” means 6.75%.

“Determination of Taxability” means any determination, decision or decree by the Commissioner of Internal Revenue, or any District Director of Internal Revenue, or any court of competent jurisdiction, to the effect that an Event of Taxability shall have occurred; provided, however, that the District shall have the opportunity to take such remedial action necessary to restore the tax-exempt status of the interest component of Lease Payments under the Lease Agreement. A Determination of Taxability also shall be deemed to have occurred on the date when the District files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability shall have occurred.

“District” means the Kensington Fire Protection District, a fire protection district organized and existing under the laws of the State of California.

“District Representative” means the President, Vice President, General Manager, or the designee of any such official, or any other person authorized by resolution delivered to the Corporation and the Assignee to act on behalf of the District under or with respect to the Site Lease and this Lease Agreement.

“Escrow Agent” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“Escrow Agreement” means the Escrow Agreement in form and substance acceptable to and executed by the District, Assignee and the Escrow Agent, pursuant to which the Escrow Fund is established and administered.

“Escrow Fund” means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

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

“Event of Taxability” means, with respect to the Lease Agreement: (a) the application of the proceeds of the advance rental payment by the Corporation pursuant to the Site Lease in such manner that the Lease Agreement becomes an “arbitrage bond” within the meaning of Tax Code Sections 103(b)(2) and 148, and with the result that interest component of the Lease Payments is or becomes includable in a recipient’s gross income (as defined in Tax Code Section 61); or (b) if as the result of

any act, failure to act or use of the proceeds of the advance rental payment or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in the Lease Agreement or the Site Lease by the District the interest component of Lease Payments is or becomes includable in a recipient's gross income (as defined in Tax Code Section 61.)

“Facility” means those certain facilities existing on the Site.

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

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

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Gross Up Rate” means an interest rate equal to 5.40% with respect to the interest applicable to the principal portion of the Lease Payments.

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

“Lease Agreement” means this Lease Agreement, dated as of July 1, 2022, between the Corporation and the District, as amended and supplemented hereafter.

“Lease Payment Date” means semiannual payments on March 1 and September 1 in each year, commencing March 1, 2023, and continuing to and including the date on which the Lease Payments are paid in full.

“Lease Payments” means all payments required to be paid by the District under Section 4.3, including any prepayment thereof under Sections 9.1 or 9.3.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the District, (b) the ability of the District to carry out its business in the manner conducted as of the date of this Lease Agreement or to meet or perform its obligations under this Lease Agreement on a timely basis, (c) the validity or enforceability of this Lease Agreement, or (d)

the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

“Material Litigation” means any action, suit, proceeding, inquiry or investigation against the District in any court or before any arbitrator of any kind or before or by any Governmental Authority which, (i) if determined adversely to the District, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated by this Lease Agreement, or (iii) may adversely affect (A) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes or (B) the ability of the District to perform its obligations under this Lease Agreement.

“Net Proceeds” means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“Permitted Encumbrances” means, as of any time: (a) liens for general *ad valorem* taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Site Lease, this Lease Agreement and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property issued as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the District certifies in writing will not materially impair the use of the Property for its intended purposes.

“Property” means, collectively, the Site and the Facility.

“Rental Period” means each period during the Term of the Lease commencing on and including September 2 in each year and extending to and including the next succeeding September 1. The first Rental Period begins on the Closing Date and ends on September 1, 2022.

“Site” means that certain real property more particularly described in Exhibit A to the Site Lease and in Exhibit A to the Lease Agreement.

“Site Lease” means the Site Lease, dated as of July 1, 2022, between the District, as lessor, and the Corporation, as lessee, together with any duly authorized and executed amendments thereto.

“State” means the State of California.

“Tax Certificate” means that certain Tax Certificate, dated the Closing Date concerning certain matters pertaining to the use and investment of proceeds of the Lease executed by the District on the date of issuance thereof, including any and all exhibits attached thereto.

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

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

Section 1.2. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II
COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.1. Covenants, Representations and Warranties of the District. The District makes the following covenants, representations and warranties to the Corporation and the Assignee as of the date of the execution and delivery of this Lease Agreement:

(a) *Due Organization and Existence.* The District is a fire protection district, organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the District has duly authorized the execution and delivery by the District of the Site Lease and this Lease Agreement.

(b) *Due Execution.* The representative of the District executing the Site Lease and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the Board of Directors of the District.

(c) *Valid, Binding and Enforceable Obligations.* The Site Lease and this Lease Agreement have been duly authorized, executed and delivered by the District and constitute the legal, valid and binding agreements of the District enforceable against the District in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of the Site Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a material 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 District is a party or by which it or its properties are otherwise subject or bound including all applicable restrictive covenants, zoning, ordinances and building laws,

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 District, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease or this Lease Agreement or the financial condition, assets, properties or operations of the District.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the District or of the voters of the District, 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 the Site Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the District or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a Material Adverse Effect upon the consummation of the transactions contemplated by or the validity of the Site Lease and this Lease Agreement or upon the financial condition, assets, properties or operations of the District, and the District 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 Agreement, or the financial condition, assets, properties or operations of the District.

(g) *Sufficient Funds.* The District reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) *No Defaults.* The District has never non-appropriated or materially defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(i) *Fee Title.* The District is the owner in fee of title to the Property. No lien or encumbrance on the Property materially impairs the District's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(j) *Use of the Property.* During the term of this Lease Agreement, the Property will be used by the District only for the purpose of performing one or more governmental or proprietary functions of the District consistent with the permissible scope of the District's authority

(k) *Change in Financial Condition.* The District has experienced no material change in its financial condition since June 30, 2021.

(l) *Flooding Risk.* The Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(m) *Value of Property and Useful Life of Property.* At the time of its completion, use and occupancy, the value of the Property (insurance and/or assessed value) will not be less than \$ _____ and the useful life of the Property at least extends to September 1, 2057.

(n) *Essential to District Operations.* The Property is essential to the District's efficient and economic operations and the lease thereof for use by the District is in the best interest of the District.

(o) *Financial Statements.* The statement of financial position of the District as of June 30, 2021, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Assignee, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the District at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect, and (ii) no material increase in the indebtedness of the District.

(p) *Compliance with Seismic Building Code Requirements.* To the best knowledge of the District, and without independent investigation, the improvements on the Property were built in compliance with seismic building code requirements of the State of California at the time such improvements were constructed.

(q) *No Material Adverse Change.* Since the most current date of the information, financial or otherwise, supplied by the District to the Assignee:

(i) There has been no change in the assets, liabilities, financial position or results of operations of the District which might reasonably be anticipated to cause a Material Adverse Effect.

(ii) The District has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iii) The District has not (A) incurred any material indebtedness on, or lease obligations payable from, its general fund, other than the Lease Payments, and trade accounts payable arising in the ordinary course of the District's business and not past due, or (B) guaranteed the indebtedness of any other person.

(r) *Accuracy of Information.* All information, reports and other papers and data furnished by the District to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Assignee a true and accurate knowledge of the subject matter and were provided in expectation of the Assignee's reliance thereon in entering into the transactions contemplated by this Lease Agreement. No fact is known to the District which has had or, so far as the District can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Assignee or in other such information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the District or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and

represented, and as of the date of this representation, represent the District's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Lease Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

(s) *Hazardous Substances.* The Property is free of all Hazardous Substances, and the District is in full compliance with all Applicable Environmental Laws.

(t) *No Financial Advisory or Fiduciary Relationship.* The District acknowledges that: (i) the Assignee is acting solely as assignee of the Corporation's interests in this Lease Agreement for its own loan account and not as a fiduciary for the District or in the capacity of broker, dealer, municipal securities underwriter, placement agent, or municipal advisor; (ii) the Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the District (including to any financial advisor or placement agent engaged by the District) with respect to the structuring of the financing or the execution and delivery of this Lease Agreement; (iii) the Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the District with respect to the transactions relating to the structuring of the financing or the execution and delivery of this Lease Agreement and the discussions, undertakings, and procedures leading thereto; (iv) each of the District, its financial advisor (if any), and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the lease financing transaction from its financial, legal, and other advisors (and not the Assignee or its affiliates) to the extent that the District, its financial advisor (if any), or its placement agent desires to, should, or needs to obtain such advice; (v) the Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the District's financial advisor (if any) or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the District's financial advisor (if any) or placement agent, with respect to any such matters; and (vi) the transactions between the District and the Assignee are arm's length, commercial transactions in which the Assignee is acting and has acted solely as a principal and for its own interest, and the Assignee has not made recommendations to the District with respect to the transactions relating to this Lease Agreement.

(u) *Financial Obligation Disclosure.* In connection with the District's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by the District pursuant to SEC Rule 15c2 12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), the District believes it may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system or its successor ("EMMA") notice of its incurrence of its obligations with respect to this Lease and related documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with this Lease and related documents, in each case including a full copy thereof or a description of the material terms thereof (each such posting, an "EMMA Posting"). The District agrees that it shall not file or submit or permit the filing or submission of any EMMA Posting that includes information relating to Capital One Public Funding, LLC ("COPF"), including the following: unredacted

sensitive or confidential information about COPF or its affiliates in any portion of an EMMA Posting, address and account information of COPF or any affiliates, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of COPF or its affiliates. The District acknowledges and agrees that COPF and its affiliates are not responsible for the District's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule

(v) *Project Completion; Available Funds.* The District hereby covenants to complete the Project on or prior to September 1, 2024, and in furtherance thereof covenants to utilize other legally available funds of the District to ensure the adequacy of funds to accomplish such completion to the extent amounts on deposit in the Escrow Fund are insufficient.

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

(a) *Due Organization and Existence.* The Corporation is a non-profit public benefit corporation, duly organized and existing under the laws of the State, has full legal right, power and authority to enter into the Site Lease, this Lease Agreement and the Assignment Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery by the Corporation of the Site Lease, this Lease Agreement and the Assignment Agreement.

(b) *Due Execution.* The representative of the Corporation executing the Site Lease, this Lease Agreement and the Assignment Agreement is fully authorized to execute the same under official action taken by the Board of Directors of the Corporation.

(c) *Valid, Binding and Enforceable Obligations.* The Site Lease, this Lease Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of the Site Lease, this Lease Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a material violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease, this Lease Agreement and the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Site Lease, this Lease Agreement or the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* To the best knowledge of the Corporation, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the Corporation or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease, this Lease Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease, this Lease Agreement or the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

(g) *Continued Existence of the Corporation.* The Corporation will take or cause to be taken all actions reasonably necessary to continue its existence until such time as the Lease Payments have been paid in full.

(h) *Municipal Advisor Rules.* The Corporation is not acting as an advisor to the District, including, without limitation, as a “Municipal Advisor” as such term is defined in the Municipal Advisor Rules, or an agent or a fiduciary of the District and the Corporation has not provided any advice or assumed any advisory or fiduciary responsibility in favor of the District with respect to the transaction contemplated hereby or by the Site Lease and the discussions, undertakings and procedures leading thereto.

ARTICLE III DEPOSIT AND APPLICATION OF FUNDS

Section 3.1. Deposit of and Application of Funds. The amount of \$ _____ shall be derived from amounts paid by the Assignee under the Assignment Agreement. On the Closing Date, the Assignee shall cause the amount of (a) \$ _____ to be deposited into the Escrow Fund held by the Escrow Agent pursuant to the Escrow Agreement to be used to pay for the costs of the Project (the “Project Amount”) and (b) \$ _____ to be deposited into the Escrow Fund representing capitalized interest to be used for the payment of the interest component of the Lease Payments on March 1, 2023, September 1, 2023 and March 1, 2024. In the event the Project is not completed and available for use and occupancy by the District on or prior to September 1, 2024, the District shall make the Lease Payment due on September 1, 2024 and every Lease Payment thereafter due on a Lease Payment Date from the Project Amount on deposit in the Escrow Fund until the Project is completed and available for use and occupancy by the District. In addition, a portion of the amounts paid by the Assignee under the Assignment Agreement (net of amounts retained by the Assignee for its fees) shall be deposited into the Escrow Fund to pay financing costs of the transaction in the amount of

\$ _____ pursuant to the Escrow Agreement. Any financing costs in excess of \$ _____ shall be paid by the District.

ARTICLE IV LEASE OF PROPERTY; LEASE PAYMENTS

Section 4.1. Lease of Property by the Corporation Back to the District.

(a) The Corporation hereby leases the Property to the District, and the District hereby leases the Property from the Corporation, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the District to the Corporation pursuant to the Site Lease shall not affect or result in a merger of the District's leasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site Lease. This Lease Agreement shall constitute a sublease with respect to the Property. The leasehold interest in the Property granted by the District to the Corporation pursuant to the Site Lease is and shall be independent of this Lease Agreement; this Lease Agreement shall not be an assignment or surrender of the leasehold interest in the Property granted to the Corporation under the Site Lease.

Section 4.2. Term. The Term of this Lease Agreement commences on the Closing Date and ends on September 1, 2047, or the date on which all of the Lease Payments have been paid in full. If on September 1, 2047, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the District shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the District, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed ten (10) years. The provisions of this Section 4.2 are subject to the provisions of Section 6.1 relating to the taking in eminent domain of the Property or any portion thereof.

Section 4.3. Lease Payments.

(a) *Obligation to Pay.* Subject to the provisions of Sections 6.1 and 6.3 and the provisions of Article IX, the District agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the amounts specified in Exhibit B attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit B. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period. The interest component of the portion of the Lease Payments has been calculated based on a tax-exempt interest rate of 4.070% per annum, on the basis of a 360-day year of twelve 30-day months. In the event the District does not make any Lease Payment by the applicable Lease Payment Date, the interest component of the portion of the Lease Payment shall be calculated based on the Default Rate.

(b) *Additional Payments.* In addition to the Lease Payments set forth herein, the District agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Corporation therein or in this Lease Agreement; provided, however, the District may, at the District's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Corporation shall notify the District that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the District shall promptly pay such taxes and assessments or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof;

(iii) any other reasonable fees, costs or expenses incurred by the Corporation in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the District shall not be responsible for any costs incurred by the Corporation associated with any assignment made by the Assignee;

(iv) any amounts required to be paid as rebate to the United States pursuant to the Tax Certificate; and

(v) upon the occurrence of a Determination of Taxability with respect to this Lease Agreement, the District shall, with respect to future Lease Payments, make Additional Payments resulting from the application of the Gross Up Rate thereto directly to the Corporation equal to the difference between the interest component of the Lease Payments calculated at the interest rate provided in this Lease Agreement and the interest component of the Lease Payments calculated at the Gross Up Rate; provided, however, in no event shall the total of the Lease Payments and the aggregate Additional Payments under this Section 4.3(b)(v) for any Fiscal Year exceed the annual fair rental value of the Property. In addition, the District shall make immediately upon demand of the Corporation an Additional Payment to the Corporation sufficient to indemnify the Corporation for any prior Lease Payments determined to be taxable as a consequence of a Determination of Taxability such that the taxable prior Lease Payments will be calculated at the Gross Up Rate instead of the interest rate set forth in this Lease Agreement; provided, however, in no event shall the total of the Lease Payments and the aggregate Additional Payments under this Section 4.3(b)(v) for any Fiscal Year exceed the annual fair rental value of the Property. To the extent that all such Additional Payments have not been paid to the Corporation at the end of the term of the Lease Agreement, the Term shall be extended in accordance with Section 4.2 hereof.

Amounts constituting Additional Payments payable hereunder shall be paid by the District directly to the person or persons to whom such amounts shall be payable. The District shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 30 days after notice in writing from the Corporation to the District stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) *Effect of Prepayment.* If the District prepays all Lease Payments in full under Sections 9.1 or 9.3, the District's obligations under this Section will thereupon cease and terminate. If the District prepays the Lease Payments in part but not in whole under Section 9.3, the principal components of the remaining Lease Payments will be reduced on a pro rata basis; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.

(d) *Rate on Overdue Payments.* If the District fails to make any of the payments required in this Section 4.3, the payment in default will continue as an obligation of the District until the amount in default has been fully paid, and the District agrees to pay the same with interest thereon, from the date of default to the date of payment at the Default Rate per annum.

(e) *Fair Rental Value.* The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the District in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the District and the general public.

(f) *Source of Payments; Budget and Appropriation.* The Lease Payments and Additional Payments are payable from any source of legally available funds of the District, subject to the provisions of Sections 6.1 and 6.3. The District covenants to take such action as may be necessary to include all Lease Payments and Additional Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments and Additional Payments. The covenants on the part of the District herein contained constitute duties imposed by law and it is the duty of officials of the District vested with the authority to execute the terms of this Lease Agreement 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 District to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the District.

(g) *Allocation of Lease Payments.* All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) *No Offsets.* Notwithstanding any dispute between the Corporation, or Assignee as the Corporation's assignee, and the District, the District shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) *Assignment Agreement.* The District understands and agrees that all Lease Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement executed concurrently herewith, and the District hereby consents to such assignment. The Corporation hereby directs the District, and the District hereby agrees, to pay to the Assignee (or to its assignees as directed pursuant to Section 7.4 hereof) all payments payable by the District under this Section 4.3 and all amounts payable by the District under Article IX. Lease Payments shall be

paid to the Assignee in accordance with wire instructions provided by the Assignee from time to time.

Section 4.4. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Corporation will provide the District with quiet use and enjoyment of the Property and the District will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease Agreement. The Corporation will, at the request of the District and at the District's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation and the Assignee have the right to inspect the Property as provided in Sections 5.13(c) and 7.2.

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

Upon the termination of this Lease Agreement (other than under Section 8.2(b) hereof), all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the District. Upon the payment in full of all Lease Payments allocable to the Property, or upon the deposit by the District of security for such Lease Payments as provided in Section 9.4, all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the District. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the District to consummate any such transfer.

Section 4.6. Release of Excess Property. The District may, at any time and from time to time, release any portion of the Property (the "Released Property") from the Lease, with the prior written consent of the Assignee, which consent shall be at the Assignee's sole discretion, and upon satisfaction of all of the following requirements which are conditions precedent to such release:

(a) The District shall certify to the Corporation and the Assignee that no Event of Default has occurred and is continuing, and no event giving rise to an abatement of Lease Payments under Section 6.3 has occurred or is continuing with respect to the Property to be remaining following release of the Released Property;

(b) The District shall file with the Corporation and the Assignee, and cause to be recorded in the office of the Contra Costa County Recorder, an amendment to this Lease Agreement which deletes the Released Property from the description of the Property;

(c) The District shall file with the Corporation and the Assignee a written certificate of the District stating the District's determination that the estimated value of the real property which will remain leased under this Lease Agreement following such release is at least equal to the original principal components of the Lease Payments and upon request of the Assignee, the District shall provide to the Assignee additional information and documents to evidence the value of the remaining portion of the Property;

(d) The District shall file with the Corporation and the Assignee a written certificate of the District stating the District's determination that the estimated fair rental value, for each remaining Rental Period and in the aggregate, of the Property remaining after release of the

Released Property is at least equal to the remaining Lease Payments for each remaining Rental Period and in the aggregate;

(e) The District shall furnish the Corporation and the Assignee with a written opinion of Bond Counsel stating that the release of the Released Property does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State; and

(f) The District shall file with the Corporation and the Assignee such other information, documents and instruments as the Corporation or the Assignee shall reasonably request, including (if requested by the Assignee) evidence of the insurable value of the Property to be remaining following release of the Released Property, indicating that such value is in excess of the then unpaid principal component of the Lease Payments and such endorsements to the title policy delivered on the Closing Date.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Released Property. The District is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Corporation and the District shall execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement of record against the Released Property.

Section 4.7. Substitution of Property. In the event of damage or destruction of the Property due to earthquake or other uninsured casualty for which rental interruption insurance is not available, or in the event the Project is not completed and available for use and occupancy by the District on or prior to September 1, 2024, or in the event that following the condemnation of all or a portion of the Property the fair rental value of the Property remaining after such condemnation is less than the remaining Lease Payments due under this Lease Agreement, the District shall substitute under the Site Lease and this Lease Agreement one or more parcels of unimpaired and unencumbered real property, the fair rental value of which, for each remaining Rental Period and in the aggregate, shall be at least equal to the remaining unpaid principal components of the Lease Payments hereunder.

(a) If for any reason the District is unable to so substitute real property for the Property with a fair rental value at least equal to the remaining unpaid principal components of the Lease Payments hereunder, the District shall use its best efforts to obtain other financing in an amount necessary to prepay the principal component of the Lease Payments not supported by the fair rental value of the substituted property, if any.

(b) The District, with Assignee's prior written consent, which consent shall be at the Assignee's sole discretion, has the option at any time and from time to time, to substitute other real property (the "Substitute Property") for the Property or any portion thereof (the "Former Property"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(i) No Event of Default has occurred and is continuing.

(ii) The District has filed with the Corporation and the Assignee, and caused to be recorded in the office of the Contra Costa County Recorder sufficient

memorialization of an amendment hereof which adds the legal description of the Substitute Property to Exhibit A and deletes therefrom the legal description of the Former Property.

(iii) The District has obtained an ALTA policy of title insurance insuring the District's leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the remaining Lease Payments.

(iv) The District has certified in writing to the Corporation and the Assignee that the Substitute Property serves the public purposes of the District and constitutes property which the District is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the District and to serve an essential governmental function of the District.

(v) The Substitute Property does not cause the District to violate any of its covenants, representations and warranties made herein.

(vi) The District has filed with the Corporation and the Assignee a written certificate of the District or other written evidence stating that (i) the value of the Property after such substitution is at least equal to the remaining unpaid principal components of the Lease Payments, (ii) the fair rental of the Property after such substitution is at least equal to the Lease Payments thereafter coming due and payable, and (iii) the useful life of the Substitute Property at least extends to September 1, 2057.

(vii) The District shall furnish the Corporation and the Assignee with a written opinion of Bond Counsel stating that the Substitute Property does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The District is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Corporation and the District will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease Agreement and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease Agreement and the Assignment Agreement.

ARTICLE V MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property are the sole responsibility of the District and the District will maintain the Property in good condition. The District will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property

resulting from ordinary wear and tear or want of care on the part of the District or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Property, as hereinbefore more specifically set forth. The District waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the District under the terms of this Lease Agreement.

The District will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation or the District affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the District is obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The District may, at the District's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the District that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the District will promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation. The District shall promptly notify the Assignee of any tax, assessment, utility or other charge it elects to contest.

Section 5.2. Modification of Property. The District has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, prevent the District's beneficial use of the property, or cause the Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Section 5.3. Commercial General Liability Insurance. The District shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard commercial general liability insurance policy or policies in protection of the District, the Assignee and their respective members, officers, agents, employees and assigns, and shall name the Assignee as an additional insured. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits and subject to such deductibles as the District shall deem adequate and prudent, and in all events in form and amount (including any deductibles) satisfactory to the Assignee. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District (including, with Assignee's prior written consent, a self-insurance program), and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance. The District will apply the proceeds of such

liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.4. Casualty Insurance. The District will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the District, in an amount at least equal to the greater of the replacement value of the insured buildings and the aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement in favor of the Assignee. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Earthquake insurance shall only be carried if available from reputable insurers at a reasonable cost as determined by the General Manager of the District. Such insurance shall be subject to a deductible of not to exceed \$1,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District (including, with the Assignee's prior written consent, a self-insurance program), and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance. The District will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.5. Rental Interruption Insurance. The District will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24 month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the District. The District will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Section 5.6. Worker's Compensation Insurance. If required by applicable California law, the District shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District (including a self-insurance program), and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance.

Section 5.7. Recordation Hereof; Title Insurance. On or before the Closing Date, the District shall, at its expense, (a) cause this Lease Agreement, the Site Lease and the Assignment Agreement, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Contra Costa County Recorder with respect to the Property, and (b) obtain a CLTA or ALTA title insurance policy insuring the Assignee's interests in the leasehold estate established under the Site Lease and hereunder in the Property, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Lease Payments. The District will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.8. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.3, 5.4 and 5.5 and provided by third party insurance carriers shall name the District and the Assignee as insured parties and the Assignee as loss payee and shall include a lender's loss payable endorsement for the benefit of the Assignee. In the case of coverage pursuant to Section 5.3, the Corporation and the Assignee shall be added as additional insureds. Prior to the Closing Date, the District will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the District will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the District shall notify the Assignee of such fact.

Section 5.9. Installation of District's Personal Property. The District may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the District, in which the Corporation has no interest, and may be modified or removed by the District at any time. The District must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the District from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The District will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such encumbrances as the District certifies in writing to the Assignee do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Assignee provides its prior written approval, which approval shall be at Assignee's sole discretion. Except as expressly provided in this Article V, the District will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The District will reimburse the Assignee for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Advances. If the District fails to perform any of its obligations under this Article V, the Corporation may take such action as may be necessary to cure such failure, including the advancement of money, and the District shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.3(d).

Section 5.12. District Consent to Assignment Agreement. The Corporation's rights under this Lease Agreement (excluding the right to receive notices, the right to reimbursement of costs and to indemnification), including the right to receive and enforce payment of the Lease Payments, and the Site Lease, are being assigned to the Assignee pursuant to the Assignment Agreement. The District hereby consents to such assignment and to any additional assignment of such rights by the

Assignee or its assignees. The District agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Assignee or its assignees to protect their interests in the Property and in this Lease Agreement.

Section 5.13. Environmental Covenants.

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

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

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

ARTICLE VI
EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the District and the Assignee such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

Section 6.2. Application of Net Proceeds.

(a) *From Insurance Award.*

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the District in the event of any such damage or

destruction shall be deposited by the District promptly upon receipt thereof in a special fund with the Assignee designated as the “Insurance and Condemnation Fund.”

(ii) Within ninety (90) days following the date of such deposit, the District shall determine and notify the Corporation and the Assignee in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the District and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.3 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the District’s determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of the unpaid principal component of the Lease Payments and other amounts pursuant to Section 9.3 of this Lease Agreement; *provided, however*, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, and all other costs related to such prepayments pursuant to Section 9.3 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; *provided further, however*, that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of the unpaid principal component of the Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by a District Representative.

(iv) In the event the District’s determination is as set forth in clause (B) of subparagraph (ii) above, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the District, and until the Property has been restored to its prior condition, the District shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Assignee, at its sole discretion.

(b) *From Eminent Domain Award.* If all or any part of the Property 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 by the District in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the District has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the District to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the District shall so certify to the

Corporation and the Assignee, and the District shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(ii) If the District has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the District to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the District shall so certify to the Corporation and the Assignee, and the District shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the District has given written notice to the Corporation and the Assignee of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the District to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the District shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(iv) In making any determination under this Section 6.2(b), the District may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Corporation and the Assignee. Any such determination by the District shall be final.

(c) *From Title Insurance.* The Net Proceeds from a title insurance award shall be deposited by the District in the Insurance and Condemnation Fund and credited towards the prepayment of Lease Payments required to be paid pursuant to Section 9.3 of this Lease Agreement.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the District of the Property or any portion thereof to the extent to be agreed upon by the District and the Assignee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit B, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a District Representative to the Corporation and the Assignee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the District waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Lease Payments shall also be abated in the event the District does not complete the Project for its use and occupancy prior to September 1, 2024. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance, or (b) amounts in the Insurance and Condemnation Fund or the Escrow Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

**ARTICLE VII
OTHER COVENANTS OF THE DISTRICT**

Section 7.1. Disclaimer of Warranties. THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE DISTRICT OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE DISTRICT ACKNOWLEDGES THAT THE DISTRICT LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE DISTRICT. In no event is the Corporation liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or use of the Property by the District.

Section 7.2. Access to the Property; Grant and Conveyance of Right of Entry. The District agrees that the Corporation, and the Corporation's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the District, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The District further agrees that the Corporation, and the Corporation's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the District, as may be reasonably necessary to cause the proper maintenance of the Property if the District fails to perform its obligations hereunder. Neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

The District further grants, conveys and confirms to the Corporation, for the use, benefit and enjoyment of the Corporation, its successors in interest to the Property, including the Assignee, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the District adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.3. Release and Indemnification Covenants. The District hereby indemnifies the Corporation, the Assignee and their respective directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the District or the District's employees, agents, contractors, invitees or licensees, (b) any breach or default on the part of the District in the performance of any of its obligations under this Lease Agreement, (c) any negligence or willful misconduct of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any intentional misconduct or negligence of any sublessee of the District with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) the clean-up of any Hazardous Substances or toxic wastes from the Property, or (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Corporation, the Assignee, or

their respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of the Term of this Lease Agreement for any reason. The District and the Corporation each agree to promptly give notice to each other and the Assignee of any claim or liability hereby indemnified against following learning thereof.

Section 7.4. Assignment Agreement by the Corporation. The Assignee and its assignees may assign the Site Lease and this Lease Agreement only to (a) an affiliate or (b) a bank, insurance company, or other financial institution. Such an assignment may include an assignment in whole to a trust, partnership, custodial arrangement, or similar entity, participation interests in which may be offered and sold to one or more entities listed in (a) or (b). Any participation, custodial, or similar agreement under which multiple ownership interests in the Site Lease and this Lease Agreement are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, owner, servicer, or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the “registered owner”) to act on their behalf with respect to the rights and interests of the registered owner of such interests, including with respect to the exercise of rights and remedies of the registered owner on behalf of such owners upon the occurrence of an event of default under this Lease Agreement.

Other than for the initial assignment to the Assignee, the assignor must provide notice to the District within five (5) business days of any assignment performed in accordance with this Section 7.4 and an executed copy of a letter of representations addressed to the District substantially in the form of the letter delivered by the Assignee on the Closing Date. The District hereby consents to any assignment of the Site Lease and this Lease Agreement done in accordance with this Section 7.4. The District shall pay all Lease Payments hereunder to the Assignee, as provided in Section 4.3(i) hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the District. During the Term of this Lease Agreement, the District will keep a complete and accurate record of all such notices of assignment.

Section 7.5. Assignment Agreement and Subleasing by the District. This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the District. The District may sublease the Property, or any portion thereof, with the prior written consent of the Assignee, at the Assignee’s sole discretion, subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The District shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Assignee a true and complete copy of such sublease.

(c) No such sublease by the District may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The District shall furnish the Corporation and the Assignee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Site Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property.

Section 7.6. Amendment of Lease Agreement. This Lease Agreement may be amended with the prior written consent of the Corporation and the Assignee (at the Assignee's sole discretion) provided such amendment does not, in the Assignee's sole judgment, adversely affect the Assignee.

Section 7.7. Tax Covenants. The District shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Lease Payments to become includable in gross income for federal income tax purposes. To that end, the District hereby makes the following specific covenants:

(a) The District hereby covenants that it shall not make or permit any use of the proceeds of this Lease Agreement that may cause the Lease Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

(b) The District covenants that the proceeds of the Lease Agreement will not be used so as to cause the proceeds on the Lease Agreement to satisfy the private business tests of Section 141(b) of the Code or the private loan financing test of Section 141(c) of the Code.

(c) The District covenants not to take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Agreement to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(d) The District represents and covenants that it, together with its subordinate entities, has not and will not issue during the calendar year 2022 obligations (other than private activity bonds (except qualified 501(c)(3) bonds) as defined in Section 145 of the Code) the interest on which is exempt from federal income tax under Section 103 of the Code which, when aggregated with all obligations the interest on which is exempt from federal income tax under Section 103 of the Code, will exceed an aggregate principal amount of \$10,000,000.

Section 7.8. Financial Statements. Within nine (9) months, commencing March 31, 2023, following the end of each Fiscal Year of the District during the Term of this Lease Agreement, the District will provide the Assignee with a copy of its audited financial statements for such Fiscal Year. Such audited financial statements shall include the District's audited financial statements, including such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. Within thirty (30) days following the approval of the District's budget, the District will provide the Assignee with a copy of said budget. Additionally, the District shall provide the Assignee with timely notice of any updates from the State regarding any State investigations, material litigation and notices of default. The District hereby agrees to provide the Assignee with such other information as may be reasonably requested by the Assignee.

Section 7.9. Records and Accounts. The District covenants and agrees that it shall keep proper books of record and accounts of its operations, in which complete and correct entries shall be

made of all transactions relating to the District. Said books and records shall at all reasonable times be subject to the inspection of the Assignee upon 72 hours' prior notice.

Section 7.10. Observance of Laws and Regulations. The District will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the District, including the District's right to exist and carry on business as a fire protection district, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 7.11. Notices. During the Term of this Lease Agreement, the District shall provide to the Assignee:

(a) immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Lease Agreement, together with a detailed statement by a District Representative of the steps being taken by the District to cure the effect of such Event of Default.

(b) within ten (10) days of knowledge by the District written notice of any Material Litigation or Material Adverse Effect, or any investigation, inquiry or similar proceeding by any Governmental Authority.

(c) with reasonable promptness, such other information respecting the District, and the operations, affairs and financial condition of the District as the Assignee may from time to time reasonably request.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

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

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

(b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Assignee. However, if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such 30-day period, the Corporation and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the District within such 30-day period and diligently pursued until the default is corrected.

(c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District

as a bankrupt, or assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State act now existing or which may hereafter be enacted.

(d) Any statement, representation or warranty of a material nature made by the District in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the District is an obligor, if such default arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Assignee or any affiliate of the Assignee.

(f) Any default by the District to observe any material covenant, condition or agreement on its part to be observed or performed under the Site Lease.

(g) Any court of competent jurisdiction shall find or rule that the Site Lease or this Lease Agreement is not valid or binding against the District.

(h) Any Material Adverse Effect shall exist.

Section 8.2. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation may exercise any one or more of the following remedies:

(a) *Enforcement of Payments Without Termination.* If the Corporation does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Property, or, if the Corporation is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Corporation. The District hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the District to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage

or other suitable place in Contra Costa County for the account of and at the expense of the District, and the District hereby exempts and agrees to hold harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The District agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Lease Agreement shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The District agrees to surrender and quit possession of the Property upon demand of the Corporation for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Corporation in excess of the sum of Lease Payments plus costs and expenses incurred by the Corporation for its services in re-leasing the Property shall be paid to the District.

(b) *Termination of Lease.* If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Site Lease. If the Corporation terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the District (and notwithstanding any re-entry upon the Property by the Corporation in any manner whatsoever or the re-leasing of the Property), the District nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the District of the election on the part of the Corporation to terminate this Lease Agreement. The District covenants and agrees that no surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

(c) *Proceedings at Law or In Equity.* If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(d) *Remedies under the Site Lease.* If an Event of Default occurs and continues hereunder, the Corporation may exercise its rights under the Site Lease.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver

thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.4. Agreement to Pay Attorneys' Fees and Expenses. If any party to this Lease Agreement defaults under any of the provisions hereof and the non-defaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the non-defaulting party.

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

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

ARTICLE IX PREPAYMENT OF LEASE PAYMENTS

Section 9.1. Optional Prepayment. The District may prepay, commencing on any Lease Payment Date on or after September 1, 2035, with 20 days written notice, any of the remaining Lease Payments in whole, but not in part, from any available source of funds at a prepayment price equal to 100% of the principal component of the Lease Payments to be redeemed, together with accrued interest to the date of prepayment, without premium.

Section 9.2. [Reserved]

Section 9.3. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The District shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part in such order of prepayment as shall be selected by the District on any date, together with any accrued and unpaid interest, a prepayment premium, if applicable, and any other costs related to such prepayment, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.2. The District and the Corporation hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the District's obligations under this Section 9.3.

Section 9.4. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the District may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Corporation or a fiduciary reasonably satisfactory to the Corporation, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Corporation, which cash so held is

either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit B, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Corporation and addressed and delivered to the Corporation), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.3(a) or when due on any optional prepayment date under Section 9.1, as the District instructs at the time of said deposit; provided, however, that at or prior to the date on which any such security deposit is established, the District shall deliver to the Corporation an opinion of Bond Counsel (in form and substance acceptable to the Corporation) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the Assignee for federal income tax purposes. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the District under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the District to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the District, and (B) the release and indemnification obligations of the District under Section 7.3, and (iii) under Section 4.5, the Corporation's leasehold interest in the Property will vest in the District on the date of said deposit automatically and without further action by the District or the Corporation. The District hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Corporation. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.03 hereof to the extent payable from the funds held by the Corporation or the fiduciary as described in the first sentence of this Section 9.4.

**ARTICLE X
MISCELLANEOUS**

Section 10.1. Notices. Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Corporation, the District and the Assignee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the District:	Kensington Fire Protection District 217 Arlington Avenue Kensington, California 94707 Phone: (510) 527-8395 Attention: General Manager
---------------------	--

If to the Corporation: CSDA Finance Corporation
1112 I Street, Suite 200
Sacramento, CA 95814
Attention: Neil McCormick
Phone: (877) 924-2732

If to the Assignee: Capital One Public Funding, LLC
1307 Walt Whitman Road, 3rd Floor
Melville, NY 11747
Attention: Jonathan A. Lewis, President
Phone: (631) 531-2824

Section 10.2. Binding Effect. This Lease Agreement inures to the benefit of and is binding upon the Corporation, the District and their respective successors and assigns. The Assignee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

Section 10.3. Severability. If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 10.4. Net-net-net Lease. This Lease Agreement is a “net-net-net lease” and the District hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 10.5. Further Assurances and Corrective Instruments. The Corporation and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 10.6. Waiver of Personal Liability. No member, officer, agent or employee of the District or the Corporation shall be individually or personally liable for the payment of Lease Payments; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 10.7. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 10.8. Applicable Law. This Lease Agreement is governed by and construed in accordance with the laws of the State.

Section 10.9. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Lease Agreement.

Section 10.10. Waiver of Jury Trial; Agreement for Judicial Reference. To the fullest extent permitted by law, each of the District and the Corporation hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way

connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, each of the District and the Corporation agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The parties shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters; provided that the event the parties cannot agree upon a referee, the referee will be appointed by the court.

IN WITNESS WHEREOF, the Corporation and the District have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CSDA FINANCE CORPORATION

By: _____
Authorized Representative

KENSINGTON FIRE PROTECTION DISTRICT

By: _____
General Manager

EXHIBIT A

DESCRIPTION OF THE SITE

Address: 215 Arlington Avenue, Kensington, CA 94707

Legal Description

The Land referred to herein below is situated in an Unincorporated Area in the County of Contra Costa, State of California, and is described as follows:

LOTS 21 AND 22 IN BLOCK C, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "BERKELEY HIGHLANDS", BEING A PORTION OF LOT 2 OF THE FINAL PARTITION OF THE SAN PABLO RANCHO, CONTRA COSTA COUNTY, CALIFORNIA; FILED APRIL 17, 1912 IN BOOK 6, PAGE 150, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

APN 570-050-021-7

(End of Legal Description)

EXHIBIT B
SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component⁰	Total Lease Payment
3/1/2023			
9/1/2023			
3/1/2024			
9/1/2024			
3/1/2025			
9/1/2025			
3/1/2026			
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3/1/2046
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3/1/2047
9/1/2047

Total

⁽¹⁾ Applicable interest rate is 4.070% per annum. Default Rate of 6.75% shall apply if a Lease Payment is not made by the applicable Lease Payment Date.

AFTER RECORDATION RETURN TO:

Kutak Rock LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614-8595
Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this “Memorandum of Lease Agreement”), is entered into as of July 1, 2022, between the CSDA FINANCE CORPORATION, a non-profit public benefit corporation organized and existing under the laws of the State of California, as lessor (the “Corporation”), and the KENSINGTON FIRE PROTECTION DISTRICT, a fire protection district organized and existing under and by virtue of the laws of the State of California, as lessee (the “District”), who agree as follows:

Section 1. The Lease. The District leases from the Corporation, and the Corporation leases to the District, certain real property described in Section 2 hereof, and the improvements situated upon said real property, upon the terms and conditions, and for the term, more fully set forth in the Lease Agreement, dated as of July 1, 2022, between the Corporation, as lessor, and the District, as lessee (the “Lease Agreement”), all of the provisions of which are hereby incorporated into this Memorandum of Lease Agreement by reference.

Section 2. Leased Premises; Term. The Corporation leases, lets and demises unto the District and the District leases, hires and takes from the Corporation, that certain parcel of real property situated in Contra Costa County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the “Site”), and those certain improvements on the Site (the “Facility”). The Lease Agreement is for a term commencing on the date of recordation of this Memorandum of Lease Agreement and ending on September 1, 2047, or such earlier or later date on which the Lease Payments (as defined in the Lease Agreement) are paid in full or provision has been made for such payment in accordance with the Lease Agreement.

Section 3. Assignment of Lessor’s Rights Under Lease Agreement; No Merger of Title. The parties hereto acknowledge that pursuant to the Assignment Agreement, dated as of July 1, 2022, between the Corporation and Capital One Public Funding, LLC (the “Assignee”), recorded concurrently herewith, the Corporation has assigned, transferred and delivered to the

Assignee, all of its rights, title and interest in, to and under the Site Lease (as defined in the Lease Agreement) and the Lease Agreement.

Section 4. Provisions Binding on Successors and Assigns. Subject to the provisions of the Lease Agreement relating to assignment and subletting, the Lease Agreement shall inure to the benefit of and shall be binding upon the Corporation and the District and their respective successors and assigns, including the Assignee.

Section 5. Purpose of Memorandum. This Memorandum of Lease Agreement is prepared for the purpose of recordation, and it in no way modifies the provisions of the Lease Agreement.

Section 6. Execution. This Memorandum of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7. State Law. This Memorandum of Lease shall be governed by and construed in accordance with the laws of the State of California.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Corporation has caused this Memorandum of Lease Agreement to be executed in its corporate name by its duly authorized officer; and the District has caused this Memorandum of Lease Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

CSDA FINANCE CORPORATION

By: _____
Authorized Representative

KENSINGTON FIRE PROTECTION DISTRICT

By: _____
General Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, 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.

Place Notary Seal Above

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, 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.

Place Notary Seal Above

Signature of Notary Public

EXHIBIT A

DESCRIPTION OF THE SITE

Address: 215 Arlington Avenue, Kensington, CA 94707

Legal Description

The Land referred to herein below is situated in an Unincorporated Area in the County of Contra Costa, State of California, and is described as follows:

LOTS 21 AND 22 IN BLOCK C, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "BERKELEY HIGHLANDS", BEING A PORTION OF LOT 2 OF THE FINAL PARTITION OF THE SAN PABLO RANCHO, CONTRA COSTA COUNTY, CALIFORNIA; FILED APRIL 17, 1912 IN BOOK 6, PAGE 150, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

APN 570-050-021-7

(End of Legal Description)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Memorandum of Lease, dated as of July 1, 2022, from the CSDA Finance Corporation (the "Corporation") as lessor, to the Kensington Fire Protection District (the "District"), as lessee, is hereby accepted by the undersigned officer on behalf of the District, pursuant to authority conferred by resolution of the District Board adopted on July 13, 2022, and the District consents to recordation thereof by its duly authorized officer.

Dated: July __, 2022

**KENSINGTON FIRE PROTECTION
DISTRICT**

By: _____
General Manager

PLACEMENT AGENT AGREEMENT

July 1, 2022

Kensington Fire Protection District
217 Arlington Avenue
Kensington, CA 94707

Attention: Bill Hansell, General Manager

The undersigned, Oppenheimer & Co. Inc. (the “Placement Agent”), offers to enter into the following agreement (this “Agreement”) with the Kensington Fire Protection District (the “Issuer”), which, upon acceptance by the Issuer, will be binding upon the Issuer and the Placement Agent.

The Issuer acknowledges and agrees that (i) the placement of the 2022 Lease Agreement (the “Obligations”) pursuant to this Placement Agent Agreement is an arm’s-length commercial transaction between the Issuer and the Placement Agent, (ii) in connection therewith and with the discussion, undertakings and procedures leading up to the consummation of such transaction, the Placement Agent is not acting as a fiduciary of or a financial advisor to the Issuer, (iii) the Placement Agent has not assumed an advisory or fiduciary responsibility in favor of the Issuer with respect to (a) the offering of the Obligations or the process leading thereto (whether or not the Placement Agent has advised or is currently advising the Issuer on other matters) or (b) any other obligation to the Issuer except the obligations expressly set forth in this Placement Agent Agreement, and (iv) the Issuer has consulted with its own legal and other professional advisors to the extent it deemed appropriate in connection with the offering of the Obligations.

The Obligations shall be issued under and pursuant to the Lease Agreement, dated as of July 1, 2022 (the “Issuing Document”), by and between the Issuer and Capital One Public Funding, LLC (the “Purchaser”). [In connection with the issuance of the Obligations, the Issuer is entering into the Site Lease and the Assignment Agreement]. The Lease Agreement, Site Lease and Assignment Agreement are collectively referred to herein as the “Issuer Documents.”

Upon the terms and conditions and upon the basis of the representations, warranties and agreements set forth herein, the Placement Agent and the Issuer hereby agree as follows:

1. Appointment of Placement Agent; Placement of Obligations; Closing.

(a) The Issuer hereby appoints the Placement Agent to act, and the Placement Agent hereby agrees to act, as the exclusive placement agent for the Issuer in connection with the private sale and issuance of its Obligations, and the Placement Agent hereby accepts such appointment. As compensation for its services hereunder, the Placement Agent shall charge a fee not in excess of \$17,500. At the closing of any such sale, the Issuer shall pay or cause to be paid such fee to the Placement Agent by wire transfer or immediately available funds. The above fee does not include any services the Placement Agent may render in the future to the Issuer with respect to any offering or placement of municipal securities other than the Obligations.

(b) The Issuer understands that the Placement Agent will be acting as the agent of the Issuer in the offering and sale of the Obligations and agrees that, in connection therewith, the Placement Agent will use its “best efforts” to place the Obligations. The Placement Agent agrees that, in furtherance of its obligations hereunder, it shall provide substantially accurate and complete information to potential purchasers of the Obligations to the extent that it is able.

(c) The Issuer expressly agrees that nothing in this Agreement evidences or creates any expressed or implied commitment by the Placement Agent to purchase or place any of the Obligations.

(d) On the closing date, the Issuer will cause to be delivered (a) a final approving opinion of Kutak Rock, as Bond Counsel to the Issuer (“Bond Counsel”), dated the closing date, addressed to or with a reliance letter to the Placement Agent, in a form acceptable to the Placement Agent, to the effect that the Obligations constitute valid and legally binding obligations of the Issuer payable from and secured by an irrevocable pledge of any source of legally available funds of the District as set forth in the Issuing Document and that the interest on the Obligations is exempt from federal and State of California income taxes under existing laws, regulations, rulings and judicial decisions, (b) one or more certificates in form and tenor satisfactory to the Placement Agent evidencing the proper execution and delivery of the Obligations and receipt of payment therefor, including statements of the Issuer, dated as of the date of such delivery, to the effect that there is no litigation pending or, to the knowledge of the signer or signers thereof, threatened relating to the issuance, sale and delivery of the Obligations, (c) a letter or certificate of the Purchaser, addressed to the Placement Agent, in form and content acceptable to the Placement Agent.

2. Reliance. The Issuer recognizes that, in providing services under this Agreement, the Placement Agent will rely upon and assume the accuracy and completeness of the financial, accounting, tax and other information discussed with or reviewed by the Placement Agent for such purpose, and the Placement Agent does not assume responsibility for the accuracy and completeness thereof. The Placement Agent will have no obligation to conduct any independent evaluation or appraisal of the assets or the liabilities of the Issuer or any other party or to advise or opine on related solvency issues. Nothing in this Agreement is intended to confer upon any other person (including creditors, employees or other constituencies of the Issuer) any rights or remedies hereunder or by reason hereof.

3. Termination. The Placement Agent’s authorization to carry out its duties hereunder may be terminated by the Issuer or the Placement Agent at any time with or without cause, effective upon receipt of written notice to that effect by the other party. Notwithstanding the foregoing, in the event the Issuer terminates this Agreement and within twelve (12) months after the Issuer sells the Obligations to an investor identified by the Placement Agent prior to such termination, the amounts payable under Section 1(a) shall be immediately due and payable to the Placement Agent by the Issuer.

4. Notices. Any notice or other communication to be given to any of the parties to this Agreement may be given by delivering the same in writing as follows: to the Issuer at 217 Arlington Avenue, Kensington, CA 94707, Attention: General Manager, and to the Placement Agent at 580 California Street, Suite 2300, San Francisco, California 94104, Attention: Municipal Capital Markets Group.

5. Survival of Representations, Warranties and Agreements. This Agreement is made solely for the benefit of the Issuer and the Placement Agent, and no other person shall acquire or have

any right hereunder or by virtue hereof. All of the representations, warranties and agreements of the Issuer contained in this Agreement shall remain operative and in full force and effect regardless of delivery of any payment for the Obligations.


6. Counterparts. The Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7. Effectiveness. This Agreement shall become effective upon the execution of the acceptance hereof by duly authorized signatory of the Issuer, which acceptance hereof shall be indicated on the signature page hereof, and shall be valid and enforceable as of the time of such acceptance. This Agreement may be executed by facsimile transmission and in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Very truly yours,

OPPENHEIMER & CO. INC.

By: 
Managing Director

KENSINGTON FIRE PROTECTION DISTRICT

By: _____
Authorized Officer

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614-8595
Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE LEASE

Dated as of July 1, 2022

between the

KENSINGTON FIRE PROTECTION DISTRICT

and the

CSDA FINANCE CORPORATION

SITE LEASE

THIS SITE LEASE (the "Site Lease"), dated as of July 1, 2022, is between the KENSINGTON FIRE PROTECTION DISTRICT, a fire protection district organized and existing under and by virtue of the laws of the State of California (the "District"), as lessor, and the CSDA FINANCE CORPORATION, a non-profit public benefit corporation organized and existing under and by virtue of the laws of the State of California (the "Corporation"), as lessee;

WITNESSETH:

WHEREAS, pursuant to this Site Lease, the District proposes to lease certain real property situated in the County of Contra Costa, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon (the "Facility" and, with the Site, the "Property"), to the Corporation, all for the purpose of assisting the District in financing the acquisition of certain real property for the benefit of the District (the "Project");

WHEREAS, the Corporation proposes to lease the Property back to the District pursuant to that certain Lease Agreement, dated as of July 1, 2022, a memorandum of which is recorded concurrently herewith (the "Lease Agreement") and to assign all of its rights, title and interest in, to and under this Site Lease and the Lease Agreement, including its right to receive lease payments under the Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under the Lease Agreement in the event of a default thereunder by the District, to Capital One Public Funding, LLC including its successors and assigns (the "Assignee") pursuant to that certain Assignment Agreement, dated as of July 1, 2022, between the Corporation and the Assignee, and recorded concurrently herewith;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 1. Definitions. Capitalized terms used, but not otherwise defined, in this Site Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 2. Site Lease. The District hereby leases to the Corporation and the Corporation hereby leases from the District, on the terms and conditions hereinafter set forth, the Property.

Section 3. Term. The term of this Site Lease shall commence on the Closing Date, as defined in the Lease Agreement, and shall end on September 1, 2047, unless such term is extended or sooner terminated as hereinafter provided. If, on September 1, 2047, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then the term of this Site Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than September 1, 2057. If, prior to September 1, 2047, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site Lease shall end.

Section 4. Advance Rental Payment. The District agrees to lease the Property to the Corporation in consideration of the payment by the Corporation of an advance rental payment of

§ _____. The District and the Corporation agree that by reason of the assignment of the Lease Payments to the Assignee under and pursuant to the Assignment Agreement, the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

Section 5. Purpose. The Corporation shall use the Property solely for the purpose of leasing the Property to the District pursuant to the Lease Agreement and for such purposes as may be incidental thereto; *provided, however*, that in the event of default by the District under the Lease Agreement, the Corporation and its assigns may exercise the remedies provided in the Lease Agreement.

Section 6. District's Interest in the Property. The District covenants that it is the owner in fee of the Property.

Section 7. Assignments and Subleases. Unless the District shall be in default under the Lease Agreement, the Corporation may not assign its rights under this Site Lease or sublet the Property, except as provided in the Lease Agreement and the Assignment Agreement, without the written consent of the District and the Assignee. If the District is in default under the Lease Agreement, the Assignee (including its successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, subject to this Site Lease.

Section 8. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 9. Termination. The Corporation agrees, upon the termination of this Site Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Section 10. Default. In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Corporation, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the District shall have no right to terminate this Site Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the District will continue to pay the Lease Payments to the Assignee. In the event of the occurrence of an Event of Default under the Lease Agreement, the Corporation may (i) exercise the remedies provided in the Lease Agreement, (ii) use the Property for any lawful purpose, subject to any applicable legal limitations or restrictions, and (iii) exercise all options provided herein.

Section 11. Quiet Enjoyment. The Corporation, at all times during the term of this Site Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

Section 12. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Corporation are solely liabilities of the Corporation and the District hereby releases each and every board member, director, officer, employee and agent of the Corporation of and from any

personal or individual liability under this Site Lease. No board member, director, officer, employee or agent of the Corporation shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Corporation hereunder.

Section 13. Taxes. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Corporation's interest in the Property created by this Site Lease (including both land and improvements) will be paid by the District in accordance with the Lease Agreement.

Section 14. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Corporation shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Corporation or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the District. The District hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Property through the eminent domain powers of the District. However, the District hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the District with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 15. Use of the Proceeds. The District and the Corporation hereby agree that the lease to the Corporation of the District's right and interest in the Property pursuant to Section 2 serves the public purposes of the District.

Section 16. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease 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 notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 18. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District and the Corporation and their respective successors and assigns. The Assignee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

Section 19. Amendment. This Site Lease may not be amended except as permitted under the Lease Agreement.

Section 20. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

Section 21. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 22. No Merger. Neither this Site Lease, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the District to the Property under this Site Lease and the District's leasehold interest therein under the Lease Agreement.

Section 23. 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 together shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the District and the Corporation have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**KENSINGTON FIRE PROTECTION
DISTRICT**

By: _____
General Manager

CSDA FINANCE CORPORATION

By: _____
Authorized Representative

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, 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.

Place Notary Seal Above

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, 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.

Place Notary Seal Above

Signature of Notary Public

EXHIBIT A

DESCRIPTION OF THE SITE

Address: 215 Arlington Avenue, Kensington, CA 94707

Legal Description

The Land referred to herein below is situated in an Unincorporated Area in the County of Contra Costa, State of California, and is described as follows:

LOTS 21 AND 22 IN BLOCK C, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "BERKELEY HIGHLANDS", BEING A PORTION OF LOT 2 OF THE FINAL PARTITION OF THE SAN PABLO RANCHO, CONTRA COSTA COUNTY, CALIFORNIA; FILED APRIL 17, 1912 IN BOOK 6, PAGE 150, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

APN 570-050-021-7

(End of Legal Description)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Site Lease, dated as of July 1, 2022, from the Kensington Fire Protection District, as lessor (the “District”), to the CSDA Finance Corporation (the “Corporation”), as lessee, is hereby accepted by the undersigned officer on behalf of the Corporation, pursuant to authority conferred by the Board of Directors of the Corporation adopted on July ___, 2022, and the lessee consents to recordation thereof by its duly authorized officer.

Dated: July ___, 2022

CSDA FINANCE CORPORATION

By: _____
Authorized Representative