

CITY OF ELK GROVE CITY COUNCIL STAFF REPORT ELK GROVE FINANCE AUTHORITY STAFF REPORT

AGENDA TITLE: Consider adoption of 1) a resolution of the

City Council authorizing the refinancing of a 2007 lease agreement and approving related documents and actions; 2) a resolution of the Board of Directors of the Elk Grove Finance Authority authorizing the refinancing of a 2007 lease agreement and approving related documents and actions; 3) a resolution of the City Council authorizing a) the advancement of the July 1, 2017 Debt Service payment and the full proportional payment from Capital Facilities Fee - Police to be placed into escrow; and b) authorizing the City Manager or Finance Director to make any budget adjustments necessary to record the Defeasing of the 2007 Series Bond and Issuance of the Laguna Palms Campus

Refunding Bonds

MEETING DATE: May 10, 2017

PREPARED BY: Kara Taylor-Seeman, Finance Analyst

DEPARTMENT HEAD: Brad Koehn, Director of Finance and

Administrative Services

RECOMMENDED ACTION:

City staff recommends that the City Council and Board of Directors of the Elk Grove Finance Authority adopt the following:

- A resolution of the City Council authorizing the refinancing of a 2007 lease agreement and approving related documents and actions;
- A resolution of the Board of Directors of the Elk Grove Finance Authority authorizing the refinancing of a 2007 lease agreement and approving related documents and actions; and

 A resolution of the City Council authorizing the advancement of the July 1, 2017 Debt Service payment and the full proportional payment from Capital Facilities Fee – Police to be placed into escrow and authorizing the City Manager or Finance Director to make any necessary budget adjustments to record the Defeasing of the 2007 Series Bond and Issuance of the Laguna Palms Campus Refunding Bonds.

BACKGROUND

On February 21, 2001, the City Council adopted Resolution No. 2001-09, authorizing the Mayor to enter into a Lease Agreement with CaLease Public Funding Corporation for an office building located at 8400 Laguna Palms Way.

On June 5, 2002, the City Council adopted Resolution No. 2002-97, authorizing the Mayor to enter into a Lease Agreement with CaLease Public Funding Corporation for an office building located at 8380 Laguna Palms Way.

On May 11, 2005, the City Council adopted Resolution No. 2005-123, authorizing the City Manager to enter into a Lease Agreement, with the Option to Purchase, with Jackson II LLC for an office building facility located at 8401 Laguna Palms Way.

On February 28, 2007, the City Council adopted Resolution No. 2007-54, exercising the option to purchase the office building located at 8401 Laguna Palms Way and to execute the Purchase and Sale Agreement attached to that resolution. In addition, the resolution refunded the building lease agreements for the office buildings located at 8380 and 8400 Laguna Palms Way.

In 2007 the Elk Grove Finance Authority issued Lease Revenue Bonds (2007 Capital Projects) in the original principal amount of \$18,585,000, to assist the City to finance the purchase of the office building located at 8401 Laguna Palms Way, as well as to refund/refinance the lease of office building facilities located at 8380 and 8400 Laguna Palms Way. Collectively, the three buildings are referred to as the Laguna Palms Campus. In connection with the bonds, the City entered into a lease-leaseback transaction with the Finance Authority.

ANALYSIS

There is an opportunity to secure lower interest rates and reduce overall lease payments on the 2007 bonds by refunding/refinancing the Finance Authority debt and reissuing the City's lease. This opportunity is now available because the call protections for the Series 2007 issuance will expire on July 1, 2017, allowing the Authority and City to proceed with a refunding/refinancing. Therefore, the proposed refinancing transaction is being proposed to refund the Series 2007 Lease Revenue Bonds and restate the City's lease obligaton. City staff has been working with Fieldman Rolapp, the City's Financial Advisor, on the potential refunding/refinancing that would produce significant debt service payment savings. The size and the term of the new debt issuance is conducive to a private placement. A private placement is when the financing is funded by one financial institution (typically a bank) rather than marketed as serial bonds that are sold in the retail bond market. Private placements are typically less costly and less documentation is required. Another benefit is that funding of a debt service reserve is not necessary, which results in a Piper Jaffray has been selected as the City's smaller debt issuance. Placement Agent and has solicited bids from 53 financing institutions and the most advantageous option available to the City will be selected.

The City recently adopted a Debt Management Policy, which states that the savings from the refunding/refinancing shall generally be at least 3% of the refunded principal amount of the debt. Although final interest rates are not yet determined, current estimates are that the City's estimated savings will be 5.98%, with a present value savings of \$493,579.

The proceeds from the 2017 refinancing, plus the July 1, 2017 debt service payment on the 2007 bonds, the 2007 Reserve Fund and funding from the Capital Facilities Fee – (Police) will be placed in an escrow account established in connection with the refinancing. The Series 2007 Lease Revenue Bonds will then be defeased via the refunding/refinancing and the City and Finance Authority will enter into a lease/lease back arrangement involving the Corporation Yard, and the lease payments (debt service) will be assigned to the selected Bank.

The Capital Facilities Fee – Police will pay its proportionate share of the debt in full at the time of the refunding/refinancing for the two Police facility buildings, located at 8380 and 8400 Laguna Palms Way. The Capital Facilities Fee – Police will thereafter have no future funding obligation for

the new debt. The City will also advance the debt service payment scheduled for July 1, 2017, to accomplish the refunding.

The current outstanding debt totals \$8,260,000 with principal and interest payments of \$1,253,731 due on July 1, 2017. The Reserve fund for the existing debt will no longer be required. Together, the Reserve Fund, the Principal and Interest payments due on July 1, 2017, the Capital Facilities Fee – Police payments and the Cost of Issuance is expected to result in a total outstanding new bond balance of under \$5,000,000.

BUDGET AMENDMENT

Finally, staff is requesting that Council authorize any budget adjustments necessary to complete the refunding/refinancing transaction and record the Bond closing.

FISCAL IMPACT:

The present value savings is estimated to be 5.98% of the outstanding debt. After the first year of debt service, ongoing General Fund savings will be approximately \$140,000 per year.

ATTACHMENTS:

- 1. City Council Resolution authorizing the refinancing
- 2. Elk Grove Finance Authority Resolution authorizing the refinancing
- 3. Resolution authorizing advancement of debt service and budget adjustments
- 4. Lease Agreement
- 5. Site Lease
- 6. Assignment of Lease

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AUTHORIZING THE REFINANCING OF A 2007 LEASE AGREEMENT, AND APPROVING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City of Elk Grove (the "City") entered into a Facilities Lease, dated as of June 1, 2007 (the "2007 Lease") with the Elk Grove Finance Authority (the "Authority") in the original principal amount of \$18,585,000, in order to finance and refinance the cost of constructing and equipping certain public facilities (the "2007 Project"); and

WHEREAS, the City will realize savings if all or a portion of the 2007 Lease is refinanced; and

WHEREAS, in order to provide the funds needed to refinance the 2007 Lease, the City proposes to lease the City's Corporation Yard, located at 10250 Iron Rock Way in the City (the "Leased Property") to the Authority pursuant to the Site Lease, dated as of June 1, 2017, between the Authority and the City (the "Site Lease"), in order to allow the Authority to lease the Leased Property back to the City pursuant to a Lease Agreement, dated as of June 1, 2017, between the Authority and the City (the "Lease Agreement") in consideration of the payment by the City of semiannual lease payments under the Lease Agreement as the rental for the Leased Property (the "Lease Payments"), which the Authority will assign to a bank under an Assignment of Lease Agreement, dated as of June 1, 2017, between the Authority and the bank; and

WHEREAS, the City Council desires to approve all of said transactions in furtherance of the public purposes of the City, and wishes at this time to authorize all proceedings relating to the refinancing of the 2007 Lease.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove as follows:

Section 1. Approval of Site Lease and Lease Agreement. The City Council hereby approves the refinancing plan outlined above. To that end, the City Council hereby approves the Site Lease and Lease Agreement, both of which are between the City and the Authority, in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by the City Manager. The City Manager or the Finance Director are each hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of the Site Lease and the Lease Agreement.

Section 2. Material Terms of Lease Agreement. The Lease Agreement shall be for a term that does not extend beyond 2027 (unless extended in the event of default), and the average annual Lease Payment payable by the City under the Lease Agreement shall not exceed \$890,000. The savings realized by the refinancing of the 2007 Lease shall at least equal 3% of the principal amount of the 2007 Lease being refunded.

Section 3. Official Actions. The Mayor, the City Manager, the Finance Director, the City Attorney, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved pursuant to this Resolution, including specifically an escrow or investment and defeasance instructions to U.S. Bank, National Association, the trustee in connection with bonds supported by the 2007 Lease (the "Trustee"), whether in letter form or by contract, if needed, and a Costs of Issuance Custodian Agreement, between the Trustee, as Custodian, and the City. Whenever in this resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 4. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 10th day of May 2017.

	STEVE LY, MAYOR of the	
	CITY OF ELK GROVE	
	311 31 22K 3K3 V2	
ATTEST:	APPROVED AS TO FORM:	
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JASON LINDGREN, CITY CLERK	JONATHAN P. HOBBS	_
	CITY ATTORNEY	

A RESOLUTION OF

THE BOARD OF DIRECTORS OF THE ELK GROVE FINANCE AUTHORITY AUTHORIZING THE REFINANCING OF 2007 LEASE REVENUE BONDS AND APPROVING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the Elk Grove Finance Authority (the "Authority") issued Lease Revenue Bonds in the amount of \$18,585,000 (the "2007 Bonds") and entered into a Facilities Lease, dated as of June 1, 2007 (the "2007 Lease") with the City of Elk Grove (the "City") in order to finance and refinance the cost of constructing and equipping certain public facilities for the City; and

WHEREAS, the City will realize savings if all or a portion of the 2007 Lease is refinanced; and

WHEREAS, in order to provide the funds needed to refinance the 2007 Bonds, the City proposes to lease the City's Corporation Yard, located at 10250 Iron Rock Way in the City (the "Leased Property") to the Authority pursuant to the Site Lease, dated as of June 1, 2017, between the Authority and the City (the "Site Lease"), in order to allow the Authority to lease the Leased Property back to the City pursuant to a Lease Agreement, dated as of June 1, 2017, between the Authority and the City (the "Lease Agreement") in consideration of the payment by the City of semiannual lease payments under the Lease Agreement as the rental for the Leased Property (the "Lease Payments"), which the Authority will assign to a bank under an Assignment of Lease Agreement, dated as of June 1, 2017, between the Authority and the bank (the "Assignment Agreement"); and

WHEREAS, the Board of Directors desires to approve all of said transactions in furtherance of the public purposes of the City, and wishes at this time to authorize all proceedings relating to the refinancing of the 2007 Bonds.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Directors of the Elk Grove Finance Authority as follows:

Section 1. Approval of Site Lease and Lease Agreement. The Board of Directors hereby approves the refinancing plan outlined above. To that end, the Board of Directors hereby approves the Site Lease and Lease Agreement, both of which are between the City and the Authority, in substantially the form on file with the Secretary, together with any changes therein or additions thereto deemed advisable by the Administrator or Treasurer/Controller (each an "Authorized Officer"). Each Authorized Officer is hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest and affix the seal of the Authority to, the final form of the Site Lease and the Lease Agreement.

Section 2. Material Terms of Lease Agreement. The Lease Agreement shall be for a term that does not extend beyond 2027 (unless extended in the event of default), and the average annual Lease Payment payable by the City under the Lease Agreement shall not exceed \$890,000. The savings realized by the refinancing of the 2007 Bonds shall at least equal 3% of the principal amount of the 2007 Bonds being refunded.

Section 3. Approval of Assignment Agreement. The Board of Directors hereby approves the Assignment Agreement, between the Authority and a bank to be selected and approved by an Authorized Officer, in substantially the form on file with the Secretary, together with any changes therein or additions thereto deemed advisable by an Authorized Officer. Each Authorized Officer is hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest and affix the seal of the Authority to, the final form of the Assignment Agreement

Section 4. Official Actions. The Chair, the Administrator, the Treasurer/Controller, the Secretary, and all other officers of the Authority are each authorized and directed in the name and on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved pursuant to this Resolution, including specifically escrow and investment instructions to U.S. Bank National Association, the trustee for the 2007 Bonds, whether in letter form or by contract, if needed. Whenever in this resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 5. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED by the Board of Directors of the Elk Grove Finance Authority this 10 day of May 2017.

	STEVE LY, PRESIDENT of the
	ELK GROVE FINANCE AUTHORITY
ATTEST:	APPROVED AS TO FORM:
JASON LINDGREN, SECRETARY	JONATHAN P. HOBBS,
	CENERAL LEGAL COLINGEL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING ADVANCEMENT OF THE JULY 1, 2017 DEBT SERVICE PAYMENT
TO AN ESCROW ACCOUNT, PAYMENT OF CAPITAL FACILITIES FEE – POLICE
PAYMENT AND NECESSARY BUDGET ADJUSTMENTS TO RECORD THE
DEFEASING OF THE 2007 SERIES BOND AND ISSUANCE OF THE LAGUNA
PALMS CAMPUS REFUNDING BONDS

WHEREAS, the City of Elk Grove (the "City") entered into a Facilities Lease, dated as of June 1, 2007 (the "2007 Lease") with the Elk Grove Finance Authority (the "Authority") in the original principal amount of \$18,585,000, in order to finance and refinance the cost of constructing and equipping certain public facilities (the "2007 Project"); and

WHEREAS, the City will realize savings if all or a portion of the 2007 Lease is refinanced; and

WHEREAS, the City Council wishes to authorize the advancement of the July 1, 2017 debt service payment and funding from the Capital Facilities Fee – Police to the escrow account established for the new debt; and

WHEREAS, the City Council wishes to authorize the Capital Facilities Fee – Police to fully pay its proportional share of the debt at the time of the refunding/refinancing for the two Police facility buildings located at 8380 and 8400 Laguna Palms Way; and

WHEREAS, the City Council wishes to authorize amendments to the Budget to record the defeasance of the 2007 series bonds and record the issuance of the Laguna Palms Campus refunding Bond; and

WHEREAS, the refunded/refinanced debt conforms to the City's Debt Management Policy; and

WHEREAS, the City Council desires to approve all of said transactions in furtherance of the public purposes of the City, and wishes at this time to authorize all proceedings relating to the refinancing of the 2007 Lease.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Elk Grove as follows:

Section 1. Escrow Account. The City Council of the City of Elk Grove hereby authorizes the July 1, 2017 debt service payment, the 2007 Reserve Fund balance and the funding from the Capital Facilities Fee – Police to be placed into an escrow account established under the Escrow Agreement.

Section 2. Capital Facilities Fee – Police. The City Council of the City of Elk Grove hereby authorizes the Capital Facilities Fee – Police to fully pay its proportional share of the debt at the time of the refunding/refinancing for the two Police facility buildings, located at 8380 and 8400 Laguna Palms Way. The Capital Facilities Fee – Police will thereafter have no future funding obligation for the new debt.

Section 3. Budget Adjustments. The City Council of the City of Elk Grove hereby authorizes the City Manager or Finance Director to effect any budget adjustments necessary to record the defeasing of the 2007 Series bond and issuance of the Laguna Palms Campus Refunding Bonds.

Section 4. Effectiveness. This resolution shall take effect from and after its adoption.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 10th day of May 2017.

	STEVE LY, MAYOR of the CITY OF ELK GROVE
ATTEST:	APPROVED AS TO FORM:
JASON LINDGREN, CITY CLERK	JONATHAN P. HOBBS,

ATTACHMENT 4

TO BE RECORDED AND WHEN RECORDED RETURN TO:

Jones Hall, A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: David T. Fama, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

LEASE AGREEMENT

Dated as of June 1, 2017

by and between

ELK GROVE FINANCE AUTHORITY, as Sublessor

and

CITY OF ELK GROVE, as Sublessee

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LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated as of June 1, 2017, is between the ELK GROVE FINANCE AUTHORITY, a joint exercise of powers agency duly organized and existing under the laws of the State of California (the "Authority"), and the CITY OF ELK GROVE, a general law city duly organized and existing under the Constitution and laws of the State of California (the "City").

BACKGROUND:

WHEREAS, the City entered into a Facilities Lease, dated as of June 1, 2007 (the "2007 Lease") with the Authority in the original principal amount of \$18,585,000, in order to finance and refinance the cost of constructing and equipping certain public facilities (the "2007 Project"), which 2007 Lease supports the Elk Grove Financing Authority Lease Revenue Bonds (2007 Capital Projects) issued in the original principal amount of \$18,585,000 (the "2007 Bonds").

WHEREAS, the City will realize savings if all or a portion of the 2007 Lease is refinanced.

WHEREAS, in order to provide the funds needed to refinance the 2007 Lease and thereby redeem the 2007 Bonds prior to maturity, the City proposes to lease the City's Corporation Yard, located at 10250 Iron Rock Way in the City (the "Leased Property") to the Authority pursuant to the Site Lease, dated as of June 1, 2017, between the Authority and the City (the "Site Lease") in order to allow the Authority to lease the Leased Property back to the City pursuant to a Lease Agreement, dated as of June 1, 2017, between the Authority and the City (the "Lease Agreement") in consideration of the payment by the City of semiannual lease payments under the Lease Agreement as the rental for the Leased Property (the "Lease Payments"), which the Authority will assign to ______ (the "Bank") under an Assignment of Lease Agreement, dated as of June 1, 2017, between the Authority and the Bank, which has been recorded concurrently herewith in the Office of the Sacramento County Recorder.

WHEREAS, the City is authorized to enter into this Lease for the purpose of refinancing the 2007 Lease under the laws of the State of California.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Authority 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.

"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 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:

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

"Assignee" means (a) initially, ______, as assignee of certain rights of the Authority hereunder, and (b) any other entity to whom the rights of the Authority are assigned hereunder.

"Assignment of Lease" means the Assignment of Lease, dated as of June 1, 2017, between the Authority as assignor and the Assignee as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

"<u>Authority</u>" means Elk Grove Finance Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California.

"Bond Counsel" means (a) Jones Hall, A Professional Law Corporation, 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.

"<u>Business Day</u>" means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California.

"<u>City</u>" means the City of Elk Grove, a general law city formed under the Constitution and laws of the State of California.

"Closing Date" means the date of execution and delivery of this Lease by the parties hereto, being _______, 2017.

"Event of Default" means any of the events of default as defined in Section 6.1.

"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.

"<u>Fiscal Year</u>" means each twelve-month period during the Term of this Lease 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 City as its fiscal year period.

"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 facilities, 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.).

"<u>Lease</u>" means this Lease Agreement, dated as of June 1, 2017, between the Authority and the City.

"<u>Lease Payment Date</u>" means March 1 and September 1 in each year, commencing March 1, 2018, and continuing to and including the date on which the Lease Payments are paid in full.

"<u>Lease Payment</u>" means all payments required to be paid by the City under Section 4.5, including any prepayment thereof under Sections 9.2 or 9.3.

"<u>Leased Property</u>" means the land more particularly described in Appendix A, together with all improvements located thereon.

"<u>Net Proceeds</u>" means any insurance proceeds 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 Leased 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 City may permit to remain unpaid under Article VI of this Lease; (b) this Lease and the Assignment of Lease; (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 with respect to the Leased Property issued as of the Closing Date by Stewart Title Insurance Co.; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

"Rental Period" means each period during the Term of the Lease commencing on and including March 2 in each year and extending to and including the next succeeding March 1,

except that the first Rental Period begins on the Closing Date and ends on March 1, 2018, and the last rental period begins on March 2, 2018, and ends on March 1,

"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.

"<u>Term of this Lease</u>" or "<u>Term</u>" means the time during which this Lease is in effect, as provided in Section 4.3.

"2007 Lease" means the Facilities Lease, dated as of June 1, 2007 by and between the City and the Authority.

"2007 Bonds" means the Elk Grove Financing Authority Lease Revenue Bonds (2007 Capital Projects) issued in the original principal amount of \$18,585,000.

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; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease 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 City. The City makes the following covenants, representations and warranties to the Authority as of the date of the execution and delivery of this Lease:

- (a) <u>Due Organization and Existence</u>. The City is a general law city duly organized and validly existing under the Constitution and laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of this Lease.
- (b) <u>Due Execution</u>. The representatives of the City executing this Lease have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) <u>Valid, Binding and Enforceable Obligations</u>. This Lease has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreements of the City enforceable against the City in accordance with its terms.
- (d) No Conflicts. The execution and delivery of this Lease, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the financial condition, assets, properties or operations of the City.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) <u>No Litigation</u>. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets,

properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the financial conditions, assets, properties or operations of the City.

- (g) <u>Essential</u>. The Leased Property and the financing pursuant to this Lease and the Assignment of Lease are essential to the City's efficient and economic operation, and are in the best interests of the City.
- (h) <u>Budget</u>. The obligations of the City under this Lease, including without limitation the obligation to make Lease Payments, are obligations payable from the City's general fund budget or other available funds of the City.

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

- (a) <u>Due Organization and Existence</u>. The Authority is a joint exercise of powers agency duly organized and existing under the laws of the State of California, has full legal right, power and authority to enter into this Lease and the Assignment of Lease and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Authority has duly authorized the execution and delivery of this Lease and the Assignment of Lease.
- (b) <u>Due Execution</u>. The representatives of the Authority executing this Lease and the Assignment of Lease are fully authorized to execute the same under official action taken by the governing board of the Authority.
- (c) Valid, Binding and Enforceable Obligations. This Lease and the Assignment of Lease have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of this Lease and the Assignment of Lease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or

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

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease or the Assignment of Lease, 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. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets. properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease or the Assignment of Lease, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order. regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the Assignment of Lease or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III DEPOSIT AND APPLICATION OF FUNDS

ARTICLE IV

LEASE OF LEASED PROPERTY; LEASE PAYMENTS

SECTION 4.1. Lease of Leased Property by City to Authority. For and in consideration of the deposit by the Assignee of \$_____ with the Trustee in accordance with Section 3.1, the City has agreed to lease the Leased Property to the Authority under the Site Lease for a term which is coterminous with the Term of this Lease. The Authority shall use the Leased Property as so leased solely for the purpose of subleasing the Leased Property back to the City under the provisions of this Lease Agreement. No merger of the Site Lease and this Lease shall be effected by the City's lease of the Leased Property to the Authority under the Site Lease, and the Authority's sublease of the Leased Property back to the City under Section 4.2.

SECTION 4.2. <u>Sublease of Leased Property by Authority Back to City</u>. The Authority hereby subleases the Leased Property to the City, and the City hereby subleases the Leased Property from the Authority. The Leased Property shall be subleased to the City under this Lease upon the terms and provisions hereof.

SECTION 4.3. <u>Term</u>. The Term of this Lease commences on the Closing Date and ends on the date on which all of the Lease Payments have been paid in full, but in no event beyond March 1, _____. The provisions of this Section 4.3 are subject to the provisions of Section 6.2 relating to the taking in eminent domain of the Leased Property or any portion thereof.

SECTION 4.4. Lease Payments.

- (a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Appendix 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 Appendix B. The Lease Payments payable in any Rental Period with respect to the Leased Property shall be for the use of the Leased Property during such Rental Period.
- (b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City 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 in inverse chronological order; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.
- (c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.4, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the rate of % per annum.

- (d) Fair Rental Value. The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and will be paid by the City 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 Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making this determination, consideration has been given to the estimated fair market value of the Leased Property, the costs of financing the deposits required to be made under Section 3.1, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.
- (e) Source of Payments; Budget and Appropriation. The Lease Payments are payable from any source of available funds of the City, subject to the provisions of Sections 6.2, 6.3 and 9.1. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.
- (f) <u>Assignment</u>. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Assignee under the Assignment of Lease, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section 4.4 and all amounts payable by the City under Article IX.

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

SECTION 4.6. <u>Title</u>. At all times during the Term of this Lease, the City shall hold title to the Leased 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 (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Leased Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the

Authority in and to the Leased Property shall be transferred to and vested in the City. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

SECTION 4.7. Release of Excess Property. The City may any time and from time to time, release any portion the Leased Property (the "Released Property") from the Lease, with the prior written consent of the Assignee (which may not unreasonably be withheld) and upon satisfaction of all of the following requirements which are conditions precedent to such release:

- (a) The City must certify to the Authority and the Assignee that no Event of Default has occurred and is continuing;
- (b) The City must file with the Authority and the Assignee, and cause to be recorded in the office of the Sacramento County Recorder an amendment to this Lease which deletes the Released Property from the description of the Leased Property; and
- (c) The City must file with the Authority and the Assignee a written certificate of the City stating the City's determination that the estimated annual fair rental value of the real property which will remain leased under this Lease following such release is at least equal to the maximum amount of Lease Payments becoming due in any remaining Rental Period.

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

SECTION 4.8. Substitution of Property.

- (i) The City and the Authority may, and upon the occurrence of any of the conditions described in paragraph (ii) below shall, substitute real property and the improvements, buildings, fixtures and equipment thereon for all or a part of the Leased Property for purposes of the Site Lease and this Lease, but only with the prior written consent of the Assignee and after the City shall have filed with the Authority and the Assignee, all of the following:
 - (a) Executed copies of the Site Lease and this Lease or amendments thereto containing the amended description of the Leased Property, including the legal description of the Leased Property as modified if necessary.
 - (b) A Certification of the City that the annual fair rental value of the Leased Property which will constitute the Leased Property after such substitution (which may be based on the construction or acquisition cost or replacement cost of such facility to the City) or will be at least equal to 100% of the maximum amount of Lease Payments becoming due in the then current Rental Period or in any subsequent Rental Period.
 - (c) A leasehold owner's policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing policy or policies resulting in title insurance with respect to the Leased Property after such substitution in an amount at least equal to the outstanding principal portion of the remaining Lease Payments; each such insurance instrument, when issued, shall name the Assignee as the insured,

and shall insure the leasehold estate of the Authority in such substituted property subject only to such exceptions as do not substantially interfere with the City's right to use and occupy such substituted property and as will not result in an abatement of Lease Payments payable by the City under this Lease.

- (d) An opinion of Bond Counsel stating that such amendment or modification (i) will, upon the execution and delivery thereof, be valid and binding upon the City; and (ii) will not, in and of itself, cause the interest component of the Lease Payments to be included in gross income for federal income tax purposes.
- (ii) If at any time the Leased Property is damaged or destroyed by earthquake or other uninsured casualty for which rental interruption insurance is not available, or if the use by the City of the Leased Property is unavailable due to Applicable Environmental Laws or the presence of a Hazardous Substance, and rental interruption insurance is not available, the City shall substitute property for the Leased Property pursuant to this Section 4.8; provided, however, that nothing in this paragraph shall supersede the provisions of Section 6.3 hereof.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1. <u>Maintenance, Utilities, Taxes and Assessments</u>. Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property shall be the responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased 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 Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The City 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 City under the terms of this Lease.

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

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

SECTION 5.2. Modification of Leased Property. The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased 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. <u>Public Liability and Property Damage Insurance</u>. The City shall maintain or cause to be maintained throughout the Term of this Lease a standard comprehensive general insurance policy or policies in protection of the Authority, City, the Assignee and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the

Leased Property. Such policy or policies must provide coverage in such liability limits and be subject to such deductibles as the City shall deem adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City 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. <u>Property Insurance</u>. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, property insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the replacement value of the insured buildings. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$750,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.1.

SECTION 5.5. Rental Interruption Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Leased 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 City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City 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. <u>Worker's Compensation Insurance</u>. If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Leased Property and, upon request, shall furnish to the Authority certificates evidencing such coverage throughout the Term of this Lease.

SECTION 5.7. Recordation Hereof; Title Insurance. On or before the Closing Date, the City shall, at its expense, (a) cause this Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Sacramento County Recorder with respect to the Leased Property, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances, in the amount equal to the aggregate amount of the principal component of the Lease Payments due hereunder. The City will apply the Net Proceeds received under such title insurance policy to prepay the remaining Lease Payments under Section 9.3.

SECTION 5.8. <u>Insurance Net Proceeds</u>; <u>Form of Policies</u>. All insurance policies (or riders) required by this Article V 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 of California, 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 10 days before the cancellation or revision becomes effective. Each insurance policy or rider required by this Article V must name the City 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. Prior to the Closing Date, the City 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 City 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 City shall notify the Assignee of such fact.

SECTION 5.9. <u>Installation of City's Personal Property</u>. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of the City, in which the Authority has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City 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 Leased Property.

SECTION 5.10. <u>Liens</u>. The City 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 Leased Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Authority do not materially and adversely affect the leasehold estate in the Leased Property hereunder and for which the Assignee approves in writing, which approval may not be unreasonably withheld. Except as expressly provided in this Article V, the City 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 City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.11. <u>Advances</u>. If the City fails to perform any of its obligations under this Article V, the Authority may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.4(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. <u>Application of Net Proceeds</u>. The Net Proceeds of any insurance award resulting from any damage to or destruction of the Leased Property by fire or other casualty, and the Net Proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings, shall be paid to the Authority to be applied as hereinafter set forth in this Section 6.1.

If the Leased Property is destroyed or damaged beyond repair at any time during the Term of this Lease, or if the Leased Property or any portion thereof is taken in eminent domain proceedings at any time during the Term of this Lease, the City shall as soon as practicable after such event, with the prior written consent of the Authority, apply the Net Proceeds resulting therefrom either to: (a) repair the Leased Property to full use; (b) replace the Leased Property, at the City's sole cost and expense, with property of equal or greater value to the Leased Property immediately prior to the time of the such destruction or damage, such replacement Leased Property to be subject to the Authority's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement; or (c) prepay the Lease Payments in accordance with Section 9.3. The City will notify the Authority of which course of action it desires to take within 15 days after the occurrence of such destruction or damage. The Authority may (but is not required to) in its own name or in the City's name execute and deliver proofs of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy, and the City hereby grants to the Authority a power of attorney coupled with an interest to accomplish all or any of the foregoing. The Net Proceeds of all insurance payable with respect to the Leased Property shall be available to the City and shall be used to discharge the City's obligations under this Section.

SECTION 6.2. <u>Termination or Abatement Due to Eminent Domain</u>. If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease shall cease with respect thereto as of the day possession shall be so taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, (a) this Lease will continue in full force and effect with respect thereto and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there will be a partial abatement of Lease Payments allocated thereto, in an amount to be determined by the City with the prior written consent of the Authority, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

SECTION 6.3. Abatement Due to Damage or Destruction. The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The amount of such abatement shall be determined by the City, with the prior written consent of the Authority, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease will continue in full force and effect and the City waives any right to

terminate this Lease by virtue of any such damage and destruction. Notwithstanding the foregoing, the Lease Payments are not subject to abatement under this Section 6.3 to the extent that the proceeds of hazard insurance or rental interruption insurance 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 a special fund for the payment of the Lease Payments.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. <u>Disclaimer of Warranties</u>. THE AUTHORITY 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 CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Authority or the Assignee liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or City's use of the Leased Property.

SECTION 7.2. Access to the Leased Property. The City agrees that the Authority, and the Authority's successors or assigns, has the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Authority, and the Authority's successors or assigns shall have such rights of access to the Leased Property or any component thereof as may be reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder. Neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. Release and Indemnification Covenants. The City shall and hereby agrees to indemnify and save the Authority and the Assignee, and their respective officers, agents, successors and assigns, harmless from and 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 Leased Property by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease, (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, (d) the use, presence, storage. disposal of any Hazardous Substances on or about the Leased Property, (e) the failure to comply with any Applicable Environmental Laws, (f) any act or negligence of any sublessee of the City with respect to the Leased Property, or (g) any loss of the federal income tax exemption of the interest portion of Lease Payments and any interest or penalties imposed by the Internal Revenue Service on the Assignee in connection therewith, any such amount to be paid to the Assignee in a single lump sum payment upon demand of the Assignee. No indemnification is made under this Section 7.3 or elsewhere in this Lease for misconduct or negligence under this Lease by the Authority or the Assignee or any of their respective officers, agents, employees, successors or assigns.

SECTION 7.4. <u>Assignment by the Authority</u>. The Authority's rights under this Lease, including all consent rights and the right to receive and enforce payment of the Lease Payments to be made by the City hereunder, have been assigned to the Assignee. The City hereby consents to such assignment. Whenever in this Lease any reference is made to the Authority and such reference concerns rights which the Authority has assigned to the Assignee, such reference shall be deemed to refer to the Assignee.

The Authority and the Assignee may make additional assignments of their interests herein, but no such assignment will be effective as against the City unless and until the Authority or the Assignee has filed with the City written notice thereof. The City shall pay all Lease Payments hereunder under the written direction of the Authority or the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease, the City will keep a complete and accurate record of all such notices of assignment.

SECTION 7.5. <u>Assignment and Subleasing by the City</u>. This Lease may not be assigned by the City. The City may sublease the Leased Property, or any portion thereof, with the prior written consent of the Assignee and subject to all of the following conditions:

- (a) This Lease and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City.
- (b) The City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority a true and complete copy of such sublease.
- (c) No such sublease by the City may cause the Leased Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State of California.
- (d) The City shall furnish 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 of California.

SECTION 7.6. <u>Amendment of Lease Agreement</u>. This Lease may be amended by the City and the Authority with the prior written consent of the Assignee. Prior to the effective date of any such amendment, and as a condition precedent to the effectiveness thereof, the City at its expense shall obtain an opinion of Bond Counsel stating that such amendment will not adversely affect the exclusion from gross income of the interest component of the Lease Payments.

It is expressly understood that the City may amend this Lease, with the consent of the Assignee, to obligate the City to pay additional amounts of rental hereunder for the use and occupancy of the Leased Property, provided that such additional lease obligations do not cause the principal amount of the total outstanding lease obligations secured by the Leased Property to exceed the fair rental value of the Leased Property, as set forth in a certificate of a City representative filed with the Authority and the Assignee.

SECTION 7.7. Tax Covenants.

- (a) Generally. The City will 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.
- (b) <u>Private Activity Bond Limitation</u>. The City will ensure that the proceeds of the Lease Payments are not so used as to cause the City's obligations

- hereunder to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.
- (c) <u>Federal Guarantee Prohibition</u>. The City will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.
- (d) No Arbitrage. The City will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Lease Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Lease Payments to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.
- (e) <u>Arbitrage Rebate</u>. The City will take any and all actions necessary to assure compliance with Section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Lease Payments.

SECTION 7.8. Environmental Covenants.

- (a) Compliance with Laws; No Hazardous Substances. The City will comply with all Applicable Environmental Laws with respect to the Leased 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 Leased Property.
- (b) Notification of Bank. The City 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 Leased Property and any operations conducted thereon or any conditions existing thereon to the Bank, and the City will notify the Bank in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substances that has occurred or is occurring that in any way affects or threatens to affect the Leased Property, or the people, structures, or other property thereon, provided that no such notifications shall create any liability or obligation on the part of the Bank.
- (c) Access for Inspection. The City shall permit the Bank, its agents, or any experts designated by the Bank to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Bank has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

SECTION 7.9. <u>Financial Statements; Budgets</u>. Within two hundred seventy (270) days following the end of each Fiscal Year of the City during the term hereof, the City shall provide the Assignee with a copy of its audited financial statements for such Fiscal Year. Such financial statements shall include a balance sheet, a statement of revenues, expenses and changes in fund balances for budget and actual, a statement of cash flows, notes, schedules and any

attachments to the financial statements and such other financial information as the Assignee shall reasonably request. Within ten (10) days of its becoming publicly available during the term hereof, the City shall provide the Assignee with a copy of its annual budget and any interim updates or modifications to such budget.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. <u>Events of Default Defined</u>. Any one or more of the following events constitutes an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City 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 City by the Authority or the Assignee; provided, however, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30 day period, the Authority and the Assignee shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within such 30 day period and diligently pursued until the default is corrected.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease; 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 City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; provided, that no termination of this Lease 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 Authority may exercise any one or more of the following remedies:

(a) Enforcement of Payments Without Termination. If the Authority does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in

the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place such property in storage or other suitable place in the Sacramento County for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease 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 City the right to terminate this Lease shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and guit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Leased Property.

(b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease and release all or any portion of the Leased Property. If the Authority terminates this Lease at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority 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. Any surplus received by the Authority from such re-leasing shall be applied by the Authority to Lease Payments due under this Lease. 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 Authority shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

(c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Authority 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.

SECTION 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease 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 Authority 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 either party to this Lease defaults under any of the provisions hereof and the nondefaulting 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 nondefaulting 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 nondefaulting party.

SECTION 8.5. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease 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. <u>Assignee to Exercise Rights</u>. Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Assignee, to which assignment the City hereby consents. Such rights and remedies shall be exercised solely by the Assignee.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. Security Deposit. Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with a fiduciary acceptable to the Authority and Assignee, in trust, an amount of cash which 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 Appendix B, or (b) invested in whole in non-callable Federal Securities in an amount which is sufficient, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 9.2, as the City instructs at the time of said deposit. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (a) the Term of this Lease shall continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said obligations, shall thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of the Lease Payments from such security deposit, and (c) under Section 4.6, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. 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.

SECTION 9.2. Optional Prepayment. The City may prepay the unpaid principal components of the Lease Payments in whole but not in part, on any date occurring on or after March 1, ______, by paying the unpaid principal amount of the Lease Payments, plus accrued interest to the date of prepayment, without premium. The City shall give the Bank 60 days notice of its intention to prepay the Lease Payments, which notice shall include the date on which the City shall prepay the Lease Payments.

SECTION 9.3. <u>Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain</u>. The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part on any date, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Leased Property to be used for such purpose under Section 6.1. The City and the Authority hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the City's obligations under this Section 9.3.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. <u>Notices</u>. Any notice, request, complaint, demand or other communication under this Lease 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, including electronic, (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 Authority, the City 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 City: City of Elk Grove

8401 Laguna Palms Way Elk Grove, California 95758

Attention: Director of Finance and Administrative Services

If to the Authority: Elk Grove Filinance Authority

8401 Laguna Palms Way Elk Grove, California 95758

Attention: Treasurer

If to the Bank:

SECTION 10.2. <u>Binding Effect</u>. This Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns.

SECTION 10.3. <u>Severability</u>. If any provision of this Lease 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. <u>Net-net-net Lease</u>. This Lease is a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

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

SECTION 10.6. Execution in Counterparts. This Lease may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

SECTION 10.7. <u>Applicable Law</u>. This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.8. <u>Captions</u>. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

* * * * *

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

	CITY OF ELK GROVE, as Sublessee
	ByCity Manager
Attest:	
City Clerk	
	ELK GROVE FINANCE AUTHORITY, as Sublessor
	ByAdministrator
Attest:	
City Clerk	

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain land located in the Sacramento County, City of Elk Grove, State of California, more fully described as follows, together with all buildings and facilities at any time situated thereon:

Commonly known as 10250 Iron Rock Way, Elk Grove, California.

(End of Legal Description)

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

Lease Payment			Total Lease
Date	Principal	Interest	Payment

TO BE RECORDED AND WHEN RECORDED RETURN TO:

ATTACHMENT 5

Jones Hall, A Professional Law Authority 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: David T. Fama, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE LEASE

Dated as of June 1, 2017

Between

CITY OF ELK GROVE

and

ELK GROVE FIINANCE AUTHORITY

SITE LEASE

This SITE LEASE is dated as of June 1, 2017, and is by and between the CITY OF ELK GROVE, a municipal corporation duly organized and existing under the laws of the State of California, also known as City of Elk Grove, a general law city, Sacramento County, State of California (the "City") as lessor and ELK GROVE FIINANCE AUTHORITY, a joint exercise of powers agency organized and operating under the laws of the State of California (the "Authority") as lessee.

RECITALS:

WHEREAS, the City entered into a Facilities Lease, dated as of June 1, 2007 (the "2007 Lease") with the Authority in the original principal amount of \$18,585,000, in order to finance and refinance the cost of constructing and equipping certain public facilities (the "2007 Project").

WHEREAS, the City will realize savings if all or a portion of the 2007 Lease is refinanced.

WHEREAS, in order to provide the funds needed to refinance the 2007 Lease, the City proposes to lease the City's Corporation Yard, located at 10250 Iron Rock Way in the City (the "Leased Property") to the Authority pursuant to the Site Lease, dated as of June 1, 2017, between the Authority and the City (the "Site Lease") in order to allow the Authority to lease the Leased Property back to the City pursuant to a Lease Agreement, dated as of June 1, 2017, between the Authority and the City (the "Lease Agreement") in consideration of the payment by the City of semiannual lease payments under the Lease Agreement as the rental for the Leased Property (the "Lease Payments"), which the Authority will assign to ______ (the "Bank") under an Assignment of Lease Agreement, dated as of June 1, 2017, between the Authority and the Bank, which has been recorded concurrently herewith in the Office of the Sacramento County Recorder.

WITNESSETH:

NOW THEREFORE, for and in consideration of the premises and covenants and conditions hereinafter contained, the parties agree as follows:

SECTION 1. Lease. The City leases to the Authority, and the Authority leases from the City, on the terms and conditions set forth herein, the Leased Property situated in the City of Elk Grove, State of California, more specifically described in Exhibit A attached hereto, including any real property improvements now or hereafter affixed thereto. Hereinafter, reference to the Authority means the Authority and the Authority's assigns for those rights, interests and obligations that may be assigned by the Authority.

SECTION 2. <u>Term.</u> The term of this Site Lease shall commence on the date of recordation in the public records, or as of the Closing Date (as defined in the Lease) and shall remain in full force and effect from such date to and including the expiration date of the term of the Lease on March 1, _____, unless such term is extended or earlier terminated as hereinafter provided:

- (a) If the City exercises its prepayment option, pursuant to Section 9.2 of the Lease, by depositing with Authority on the date of exercise the sum of all of the unpaid principal component of the Lease Payments and other amounts then due or past due, plus accrued interest to the date of prepayment, then the term of this Site Lease shall end on the date of exercise of the option; or
- (b) If prior to the expiration date of the term of the Lease, all Lease Payments under the Lease have been fully paid and retired or provision made for such payment and retirement, the term of this Site Lease shall end ten (10) days thereafter or ten (10) days after written notice to the Authority, whichever is earlier; provided, however, if the Authority exercises its option to re-enter and re-let the Leased Property under Section 8.2 of the Lease, then this Site Lease shall continue in full force and effect to and including March 1, ______.
- SECTION 3. Representations, Covenants, and Warranties of the City. The City represents, covenants and warrants to the Authority that:
- (a) The City has good and merchantable fee title to the Leased Property and has authority to enter into and perform its obligations under this Site Lease;
- (b) There are no liens or encumbrances on the Leased Property other than encumbrances set forth in the preliminary title report prepared by Stewart Title Insurance Company, dated _______, 2017;
- (c) All taxes, assessments or impositions of any kind with respect to the Leased Property, except current taxes, have been paid in full;
- (d) The Leased Property is properly zoned for the intended purpose and utilization of the Leased Property;
- (e) The City is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Leased Property;
- (f) There is no litigation of any kind currently pending or threatened regarding the Leased Property or the City's use of the Leased Property for the purposes contemplated by this Site Lease and the Lease;

SECTION 4. Environmental Covenants.

(a) <u>Definitions</u>. For purposes of this section 4, the following capitalized terms shall have he following meaning:

"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 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:

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

"Hazardous Substance" 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 facilities, 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.).

- (b). <u>Compliance with Laws; No Hazardous Substances.</u> The City will comply with all Applicable Environmental Laws with respect to the Leased 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 Leased Property.
- (c) <u>Notification of Bank.</u> The City 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 Leased Property and any operations conducted thereon or any conditions existing thereon to the Bank, and the City will notify the Bank in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substances that has occurred or is occurring that in any way affects or threatens to affect the Leased Property, or the people, structures, or other property thereon, provided that no such notifications shall create any liability or obligation on the part of the Bank.
- (d) <u>Access for Inspection</u>. The City shall permit the Bank, its agents, or any experts designated by the Bank to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Bank has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.
- SECTION 5. Release and Indemnification Covenants. The City shall and hereby agrees to indemnify and save the Authority and the Bank, and their respective officers, agents, successors and assigns, harmless from and 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 Leased Property by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Site Lease, (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, (d) the use, presence, storage, disposal of any Hazardous Substances on or about the Leased Property, (e) the failure to comply with any applicable

Environmental Laws, or (f) any act or negligence of any sublessee of the City with respect to the Leased Property. No indemnification is made under this Section 5 or elsewhere in this Site Lease for misconduct or negligence under this Site Lease by the Authority or the Bank or any of their respective officers, agents, employees, successors or assigns.

SECTION 6. Representations and Warranties of the Authority. The Authority represents and warrants to the City that:

- (a) The Authority is duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to lease and own real and personal property.
- (b) The Authority has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease have been duly authorized by all necessary corporate actions on the part of the Authority and do not require any further approvals or consents.
- (c) Execution, delivery and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Authority is a party or by which it or its property is bound.
- (d) There is no pending or, to the best knowledge of the Authority, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Authority to perform its obligations under this Site Lease.
- SECTION 7. <u>Rental.</u> The Authority shall pay to the City as rental hereunder the sum of one dollar (\$1.00), on or before the date of commencement of the term of this Site Lease.
- SECTION 8. <u>Purpose</u>. The Authority shall use the Leased Property solely for the purpose of subleasing the Leased Property to the City; provided, that in the Event of Default by the City under the Lease, the Authority may exercise the remedies provided for in the Lease.
- SECTION 9. <u>Termination</u>. The Authority agrees, upon termination of this Site Lease, (i) to quit and surrender the Leased Property in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted, (ii) to release and reconvey to the City any liens and encumbrances created or caused by the Authority and (iii) agrees that any permanent improvements and structures existing upon the Leased Property at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the City.
- SECTION 10. Quiet Enjoyment. The City covenants and agrees that it will not take any action to prevent the Authority's quiet enjoyment of the Leased Property during the term hereof; and, that in the event City's fee title to the Leased Property is ever challenged so as to interfere with the Authority's right to occupy, use and enjoy the Leased Property, the City will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Leased Property and to defend the Authority's right to occupy, use, and enjoy the Leased Property.
- SECTION 11. No Liens. The City shall not mortgage, sell, assign transfer or convey the Leased Property or any part thereof to any person during the term of this Site Lease, without the written consent of the Authority. Nothing herein shall preclude the City from granting utility

easements across the Leased Property to facilitate the use and operation of the Leased Property for which it is intended.

SECTION 12. <u>Right of Entry</u>. The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 13. <u>Assignment and Subleasing</u>. The Authority will not assign or otherwise dispose of or encumber the Leased Property or this Site Lease without the written consent of the City, unless an Event of Default has occurred, in which event the Authority may use and/or sublease or sell its interest in the Leased Property without consent of the City.

SECTION 14. <u>No Waste</u>. The Authority agrees that at all times that it is in possession of the Leased Property it will not commit, suffer or permit any waste on the Leased Property, and it will not willfully or knowingly use or permit the use of the Leased Property for any illegal act or purpose.

SECTION 15. <u>Default</u>. In the event the Authority 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 Authority, the City may not terminate this Site Lease or Authority's right to possession of the Leased Property, but may exercise any and all other remedies granted by law or in equity.

SECTION 16. <u>Eminent Domain.</u> In the event the whole or any part of the Leased Property or the improvements thereon is taken by eminent domain, the financial interest of the Authority shall be recognized and is hereby determined to be the amount of all Lease Payments then due or past due, the next succeeding Lease Payment and the unpaid principal amount of the Lease Payments, less any unearned interest as of the date the Authority receives payment in full. The balance of the award, if any, shall be paid to the City.

SECTION 17. <u>Taxes.</u> The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property or the improvements thereon.

SECTION 18. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Authority are solely liabilities of the Authority, and the City hereby releases each and every incorporator, member, director and officer of the Authority of and from any personal or individual liability under this Site Lease. No incorporator, member, director or officer of the Authority shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by the Authority under this Site Lease.

SECTION 19. <u>Partial Invalidity</u>. If any one or more of the terms, 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 or 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 20. <u>Notices</u>. Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the City or the Authority, as the case may be, by personal delivery or registered mail to the respective addresses given below.

SECTION 21. <u>Binding Effect.</u> This Site Lease shall inure to the benefit of and shall be binding upon the City, the Authority and their respective successors and assigns.

SECTION 22. <u>Amendments, Changes and Modifications.</u> This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the City and the Authority.

SECTION 23. <u>Execution in Counterparts.</u> This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 24. <u>Applicable Law.</u> This Site Lease shall be governed by and construed in accordance with the laws of the State of California.

SECTION 25. <u>Headings.</u> The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

SECTION 26. <u>Notices</u> Any notice, request, complaint, demand or other communication under this Lease 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, including electronic, (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 Authority, the City and the Bank 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 City: City of Elk Grove

8401 Laguna Palms Way Elk Grove, California 95758

Attention: Director of Finance and Administrative Services

If to the Authority: Elk Grove Filinance Authority

8401 Laguna Palms Way Elk Grove, California 95758

Attention: Treasurer

If to the Bank:

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated under their respective signatures.

	CITY OF ELK GROVE, as Lessor
	By City Manager
Attest:	
City Cler	<u> </u>
	ELK GROVE FINANCE AUTHORITY, as Lessee
	ByAdministrator
Attest:	
Secretary	<u></u>

SITE LEASE	DATED:	June 1.	. 2017
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Exhibit "A"

LEGAL DESCRIPTION OF SITE

Those certain parcels of land situated in the County of Sacramento, City of Elk Grove, State of California and legally described as follows:

Commonly known as 10250 Iron Rock Way, Elk Grove, California.

ATTACHMENT 6

TO BE RECORDED AND WHEN RECORDED RETURN TO:

Jones Hall, A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: David T. Fama

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT OF LEASE

This Assignment of Lease (this "Assignment") is dated as of June 1, 2017, and is between ELK GROVE FINANCE AUTHORITY, as assignor (the "Authority"), and _____, as assignee (the "Assignee").

BACKGROUND:

WHEREAS, the City entered into a Facilities Lease, dated as of June 1, 2007 (the "2007 Lease") with the Authority in the original principal amount of \$18,585,000, in order to finance and refinance the cost of constructing and equipping certain public facilities (the "2007 Project").

WHEREAS, the City will realize savings if all or a portion of the 2007 Lease is refinanced.

WHEREAS, in order to provide the funds needed to refinance the 2007 Lease, the City proposes to lease the City's ______, located at ______ in the City (the "Leased Property") to the Authority pursuant to the Site Lease, dated as of June 1, 2017, between the Authority and the City (the "Site Lease") in order to allow the Authority to lease the Leased Property back to the City pursuant to a Lease Agreement, dated as of June 1, 2017, between the Authority and the City (the "Lease Agreement") in consideration of the payment by the City of semiannual lease payments under the Lease Agreement as the rental for the Leased Property (the "Lease Payments").

WHEREAS, funding for the refinancing of the 2007 Lease will be provided by the Assignee, and in order to secure such financing the Authority wishes to assign its rights under the Lease, including but not limited to the right of the Authority to receive the Lease Payments from the City, as provided in this Assignment.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the Authority and the Assignee formally covenant, agree and bind themselves as follows:

- 1. Assignment of Rights to Assignee. The Authority, without recourse, hereby sells, assigns and transfers to the Assignee all of its interests under the Site Lease and the Lease, including its rights to receive the Lease Payments.
- 3. Representations and Warranties of Authority. The Authority represents and warrants that it has made no prior sale or assignment of any interest which is the subject of this Assignment; that the Lease is genuine and in all respects is what it purports to be; that the Assignee shall not be liable for and does not assume responsibility for the performance of any of the covenants, agreements or obligations specified in the Lease Agreement to be kept, paid or performed by the Authority with exception of the Assignee's obligation to issue notices upon the City's default of the Lease. The Authority further represents and warrants that as of the date of this Assignment, the Lease is in full force and effect and the City is not in default of any of the terms set forth therein.
- 4. Governing Law; Severability. This Assignment shall be construed and governed in accordance with the laws of the State of California. Any provision of this Assignment found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Assignment.
- 5. Binding on Successors. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 6. Payment of Litigation Costs. In the event of litigation between the Authority and the Assignee arising under this Assignment, the prevailing party shall be entitled to recover from the other party all costs and expenses, including attorneys' fees which may be the allocable cost of in-house counsel, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions of this Assignment.

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

ELK GROVE FINANCE AUTHORITY, as Assignor
ByExecutive Director
Executive Director
, as Assignee
Ву
Vice President

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain land located in Sacramento County, City of Elk Grove, State of California, more fully described as follows, together with all buildings and facilities at any time situated thereon:

(End of Legal Description)