

THIRD AMENDMENT TO MASTER FACILITIES SUBLEASE

This Third Amendment to Master Facilities Sublease, dated as of _____ 1, 2017 (the "Third Amendment to Facilities Sublease"), by and between FRESNO JOINT POWERS FINANCING AUTHORITY (the "Authority"), a public entity and agency, duly organized and existing pursuant to an Agreement entitled "Joint Exercise of Powers Agreement" by and between the City of Fresno and the Redevelopment Agency of the City of Fresno, as lessor, and the CITY OF FRESNO (the "City"), a charter city and municipal corporation duly organized and validly existing under the Constitution and laws of the State of California, as lessee;

WITNESSETH:

In consideration of the mutual covenants herein, the parties hereto agree as follows:

WHEREAS, the City has entered into a Master Facilities Lease with the Authority, dated as of April 1, 2008, and recorded on April 29, 2008 in the office of the County Recorder of the County (the "County Recorder") under Recorder's Serial No. 2008-0061752, as amended and supplemented by the First Amendment to Master Facilities Lease, dated as of May 1, 2008, and recorded on June 12, 2008 in the Office of the County Recorder under Recorder's Serial No. 2008-0085028 and the Second Amendment to Master Facilities Lease, dated as of August 1, 2008, and recorded on August 14, 2008 in the Office of the County Recorder under Recorder's Serial No. 2008-0115786 (the "Facilities Lease"), pursuant to which certain facilities and the respective sites thereof (collectively, the "Facilities") were leased to the Authority;

WHEREAS, the City has entered into a Third Amendment to Master Facilities Lease with the Authority, dated as of _____ 1, 2017 (the "Third Amendment to Facilities Lease"), further amending and supplementing the Facilities Lease, pursuant to which certain additional real property (as further described herein, "_____") was added to the Facilities and leased to the Authority;

WHEREAS, the City has entered into a Master Facilities Sublease with the Authority, dated as of April 1, 2008, and recorded on April 29, 2008 in the office of the County Recorder under Recorder's Serial No. 2008-0061753 (the "Original Sublease"), as amended and supplemented by a First Amendment to Master Facilities Sublease with the Authority, dated as of May 1, 2008, and recorded on June 12, 2008 in the office of the County Recorder under Recorder's Serial No. 2008-0085029 (the "First Amendment to Original Sublease") and a Second Amendment to Master Facilities Sublease with the Authority, dated as of August 1, 2008, and recorded on August 14, 2008 in the office of the County Recorder under Recorder's Serial No. 2008- 0115787 (the "Second Amendment to Original Sublease and, collectively with the Original Sublease and First Amendment to Original Sublease, the "Facilities Sublease") pursuant to which the Authority leased back the Facilities to the City;

WHEREAS, this Third Amendment to Master Facilities Sublease is entered into in order to amend and supplement in certain respects the Facilities Sublease in order to add

certain capital improvements to the property leased back by the Authority to the City pursuant to the Facilities Sublease;

WHEREAS, the City has requested the Authority to assist the City in the refinancing of public capital improvements located throughout the City (the “2017 A/B Project”);

WHEREAS, the Authority has issued \$40,955,000 aggregate principal amount of its Lease Revenue Refunding Bonds (the “Series 2008 A/B Bonds”) pursuant to a Master Trust Agreement, dated as of April 1, 2008 (the “Master Trust Agreement”), between the Authority and The Bank of New York Mellon Trust Company, N.A. (the “Trustee”);

WHEREAS, the Authority has issued \$37,685,000 aggregate principal amount of its Lease Revenue Bonds (the “Series 2008 C/D Bonds”) pursuant to the Master Trust Agreement, as amended and supplemented by the First Supplemental Trust Agreement, dated as of May 1, 2008, between the Authority and the Trustee;

WHEREAS, the Authority has issued \$24,815,000 aggregate principal amount of its Lease Revenue Bonds (the “Series 2008 E/F Bonds”) pursuant to the Master Trust Agreement, as amended and supplemented by the Second Supplemental Trust Agreement, dated as of August 1, 2008 (collectively with the Master Trust Agreement and the First Supplemental Trust Agreement, the “Trust Agreement”), between the Authority and the Trustee

WHEREAS, the Authority has agreed to issue \$_____ aggregate principal amount of Fresno Joint Powers Financing Authority Lease Revenue Refunding Bonds (Master Lease Projects), Series 2017A and Series 2017B (Federally Taxable) (collectively, the “Series 2017 A/B Bonds” and together with the Series 2008 A/B Bonds, the Series 2008 C/D Bonds, the Series 2008 E/F Bonds and any Additional Bonds, the “Bonds”), pursuant to the Trust Agreement, as amended and supplemented by a Third Supplemental Trust Agreement, to be dated as of _____ 1, 2017 (the “Third Supplemental Trust Agreement”), between the Authority and the Trustee, for the purpose of financing and refinancing the 2017 A/B Project;

WHEREAS, the Authority will use the proceeds of the Series 2017 A/B Bonds to pay to the City the rental due under the Facilities Lease and to refinance the 2017 A/B Project;

WHEREAS, under this Third Amendment to Master Facilities Sublease, the City will be obligated to make base rental payments to the Authority for the lease of certain capital improvements which will be used to pay a portion of the debt service on the Bonds;

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

ARTICLE XIX

DEFINITIONS

Section 19.01 Additional Definitions. From and after the effective date of this instrument, the following new definitions and amended definitions shall be added to Section 1.01 of the Facilities Sublease, in alphabetical order, to read as follows:

City Hall

The term “City Hall” means the improvements identified as “City Hall” in Exhibit A hereto.

Expiry Date

[The term “Expiry Date” means (i) April 1, 20[24] with respect to Fresno Memorial Auditorium, Municipal Service Center, Parking Garage No. 4, Parking Garage No. 8, Selland Arena and Woodward Park Facilities, (ii) April 1, 20[31] with respect to the Multi-Purpose Stadium, and (iii) April 1, 20[39] with respect to City Hall, Fire Station No. 16, the Regional Training Center and Valdez Exhibit Hall.]

Facilities

[The term “Facilities” means, as of the effective date of this Third Amendment to Facilities Lease, City Hall, Fire Station No. 16, Fresno Memorial Auditorium, Multi-Purpose Stadium, Municipal Services Center, Parking Garage No. 4, Parking Garage No. 8, Regional Training Center, Selland Arena, Valdez Exhibit Hall and Woodward Park Facilities.]

Fire Station No. 16

The term “Fire Station No. 16” means the improvements identified as “Fire Station No. 16” in Exhibit A hereto.

Fresno Memorial Auditorium

The term “Fresno Memorial Auditorium” shall have the meaning set forth in Section 1 of the Original Lease.

Municipal Services Center

The term “Municipal Services Center” shall have the meaning set forth in Section 1 of the Original Lease.

Multi-Purpose Stadium

The term “Multi-Purpose Stadium” means the improvements identified as “Multi-Purpose Stadium” in Exhibit A hereto.

Parking Garage No. 4

The term “Parking Garage No. 4” shall have the meaning set forth in Section 1 of the Original Lease.

Parking Garage No. 8

The term “Parking Garage No. 8” shall have the meaning set forth in Section 1 of the Original Lease.

Regional Training Center

The term “Regional Training Center” means the improvements identified as “Regional Training Center” in Exhibit A hereto.

Selland Arena

The term “Selland Arena” shall have the meaning set forth in Section 29 of the Second Amendment to Original Lease.

Third Amendment to Facilities Lease

The term “Third Amendment to Facilities Lease” means the Third Amendment to Master Facilities Lease between the City and the Authority, dated as of _____ 1, 2017, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

Third Amendment to Facilities Sublease

The term “Third Amendment to Facilities Sublease” means this Third Amendment to Master Facilities Sublease between the Authority and the City, dated as of _____ 1, 2017, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof.

Third Supplemental Trust Agreement

The term “Third Supplemental Trust Agreement” means the Third Supplemental Trust Agreement between the Authority and the Trustee, dated as of _____ 1, 2017, pursuant to which the Trustee will execute and deliver the Series 2017 A/B Bonds, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions of the Trust Agreement.

Series 2017 A/B Facilities

The term “Series 2017 A/B Facilities” means that certain real property situated in the City of Fresno, State of California, and leased from the Authority to the City pursuant to this Third Amendment to Facilities Sublease, described in Exhibit A attached hereto and made a part hereof, together with any additional real property added thereto by any supplement or

amendment hereto or any real property substituted for all or any portion of such property in accordance with the Facilities Sublease and the Trust Agreement; subject, however, to any conditions, reservations, and easements of record or known to the City.

Series 2017 A/B Bond Insurer

The term “Series 2017 A/B Bond Insurer” means Assured Guaranty Municipal Corp., or any successor thereto.

Series 2017 A/B Bonds

The term “Series 2017 A/B Bonds” means the bonds issued by the Authority under and pursuant to the Trust Agreement and the Third Supplemental Trust Agreement, the proceeds of which will be applied to the refinancing of the 2017 A/B Project and to the payment of costs related thereto.

Series 2017 A/B Lease Term

The term “Series 2017 A/B Lease Term” means the period from the commencement of the Third Amendment to Facilities Sublease until the date of termination of this Third Amendment to Facilities Sublease with respect to _____ as provided for in Section 20.02, unless such term is extended or sooner terminated as hereinafter provided.

2017 A/B Project

The term “2017 A/B Project” means the public capital improvements located throughout the City.

Valdez Exhibit Hall

The term “Valdez Exhibit Hall” means the improvements identified as “Valdez Exhibit Hall” in Exhibit A hereto.

Woodward Park Facilities

The term “Woodward Park Facilities” shall have the meaning set forth in Section 21 of the First Amendment to Original Lease.”

ARTICLE XX

LEASE OF SERIES 2017 A/B FACILITIES; TERM

Section 20.01 Sublease of Series 2017 A/B Facilities. The Authority hereby subleases to the City and the City hereby subleases from the Authority, the Series 2017 A/B Facilities, subject to Permitted Encumbrances. The Series 2017 A/B Facilities shall be included in the term “Facilities” as used in the Facilities Sublease. The City hereby agrees and covenants during the term of this Third Amendment to Facilities Sublease that, except as hereinafter provided, it will use the Series 2017 A/B Facilities for public and City purposes so as to afford

the public the benefits contemplated by the Facilities Sublease. The Multi-Purpose Stadium shall be a Restricted Property.

The Facilities Lease between the City and the Authority shall not effect or result in a merger of the City's leasehold estate pursuant to the Facilities Sublease and the City's fee estate as lessor under the Facilities Lease, and the Authority shall continue to have and hold a leasehold estate in said Facilities pursuant to the Facilities Lease throughout the term thereof and the term of the Facilities Sublease. As to said Facilities this Sublease shall be deemed and constitute a sublease.

The substitution, release and addition of property provisions of Section 2.03 of the Facilities Sublease shall apply to the Series 2017 A/B Facilities.

Section 20.02 Effective Date. This Third Amendment to Facilities Sublease shall become effective on the date of recordation of this instrument in the Office of the County Recorder or on _____ 1, 2017, whichever is earlier, and such date of commencement shall be hereinafter referred to as the "effective date," and on the effective date the additional real property consisting of the Series 2017 A/B Facilities as more fully set forth in Exhibit A to this Third Amendment to Facilities Sublease is hereby added to the Facilities Sublease and shall be encumbered by the Facilities Sublease, and references to the Facilities in the Facilities Sublease shall hereafter include the real property described in Exhibit A to this Third Amendment to Facilities Sublease.

Section 20.03 Amendment of Term. Section 2.02 of the Original Sublease, the second paragraph of Section 12.02 of the First Amendment to Original Sublease and the second paragraph of Section 16.02 of the Second Amendment to Original Sublease are hereby amended to read in full as follows:

"The term of this Facilities Sublease shall end on the Expiry Date with respect to each Facility unless such term is extended or sooner terminated as hereinafter provided. If on each Expiry Date, the Base Rental Payments payable by the City attributable to the related Facilities and all other amounts due under the Trust Agreement and under this Facilities Sublease with respect to such Facilities shall not be fully paid, or if the Base Rental Payments or other amounts payable under the Facilities Sublease with respect to such Facilities (including any Additional Payments) shall have been abated at any time and for any reason or shall not have been fully paid, then the term of this Facilities Sublease with respect to such Facilities shall be extended until ten days after the Base Rental Payments attributable to such Facilities and all other amounts due under the Trust Agreement and the Facilities Sublease with respect to such Facilities shall be fully paid, except that the term of this Facilities Sublease as to the respective Facilities shall in no event be extended beyond ten (10) years after such respective Expiry Date. If prior to such Expiry Date, the Base Rental Payments attributable to the related Facilities and all other amounts then due under the Facilities Sublease with respect to such Facilities shall be fully paid, the term of this Lease with respect to such Facilities shall

end ten (10) days thereafter or ten (10) days after written notice by the City to the Authority of such event, whichever is earlier.”

ARTICLE XXI

RENTAL PAYMENTS FOR FACILITIES

Section 21.01 Amendment of Base Rental Payments for Facilities.

Section 3.01 of the Original Sublease, Section 13.01 of the First Amendment to Original Sublease and Section 17.01 of the Second Amendment to Original Sublease are hereby amended to read in full as follows:

“The City agrees to pay to the Trustee, as assignee of the Authority, as Base Rental Payments for the use and occupancy of the Facilities (subject to the provisions of Sections 3.06 of the Facilities Sublease), annual rental payments, in accordance with the Rental Payment Schedule attached to this Third Amendment to Facilities Sublease as Exhibit B and made a part hereof. Base Rental Payments with respect to the Facilities shall be calculated on an annual basis. Each Base Rental Payment installment shall be payable ten (10) days in advance of its due date.

If the term of this Facilities Sublease shall have been extended pursuant to Section 20.02 hereof, Base Rental Payment installments shall continue to be due on April 1 and October 1 in each year, continuing to and including the date of termination of this Facilities Sublease, and payable as hereinabove described, in an amount equal to the amount of Base Rental payable for the twelve-month period commencing on the April 2 preceding the Expiry Date.

ARTICLE XXII

MISCELLANEOUS PROVISIONS

Section 22.01 Amendment of Section 2.03. Clause (vi) of Section 2.03 of the Facilities Sublease is amended to read as follows:

“(vi) An opinion of bond counsel stating that any amendment executed in connection with such addition, substitution or withdrawal, as the case may be, (i) is authorized or permitted under this Sublease; (ii) will, upon the execution and delivery thereof, be valid and binding upon the Authority and the City; and (iii) will not cause the interest on the Bonds to be included in gross income for federal income tax purposes.”

Section 22.02 Tax Covenants. The City and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest on the Series 2017A Bonds will not be included in the gross income of the owner thereof for federal income tax purposes and shall take no action that would result in such

interest being so included. To that end, the City shall comply with the provisions of the Tax Certificate, which is incorporated herein by reference as if set forth at this place.

Section 22.03 Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Third Amendment to Facilities Sublease, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered a default; however, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Certificate) or the Holders of at least 25% aggregate principal amount in Outstanding Series 2017A/B Bonds, upon payment of its fees and expenses, including counsel fees and receipt of indemnification satisfactory to it, shall, or any Holder or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, “Beneficial Owner” means any person which has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2017A/B Bonds (including persons holding Series 2017A/B Bonds through nominees, depositories or other intermediaries).

Section 22.04 Validity and Severability. If for any reason this Third Amendment to Facilities Sublease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the Authority or by the City, or if for any reason it is held by such a court that any of the covenants and conditions of the City hereunder, including the covenant to pay rentals under this Third Amendment to Facilities Sublease, is unenforceable for the full term hereof, then and in such event this Third Amendment to Facilities Sublease is and shall be deemed to be a lease from year to year under which the rentals are to be paid by the City annually in consideration of the right of the City to possess, occupy and use the Facilities, and all of the rental and other terms, provisions and conditions of this Third Amendment to Facilities Sublease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 22.05 Facilities Sublease in Full Force and Effect. Except as is in this Third Amendment to Facilities Sublease expressly provided, the Facilities Sublease shall continue in full force and effect in accordance with the terms and provisions thereof, as amended and supplemented hereby.

Section 22.06 Execution in Counterparts. This Third Amendment to Facilities Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Third Amendment to Facilities Sublease. It is also agreed that the Authority and City may each execute separate counterparts of this Third Amendment to Facilities Sublease, all with the same force and effect as though both had executed the same counterpart.

IN WITNESS WHEREOF, the Authority and the City have caused this Third Amendment to Facilities Sublease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

FRESNO JOINT POWERS FINANCING
AUTHORITY, as Lessor

By _____

Attest:

Secretary

CITY OF FRESNO, as Lessee

By _____

Attest:

City Clerk

EXHIBIT A

ADDITION TO FACILITIES

[Multi-purpose Stadium

City Hall

Regional Training Center

Fire Station No. 16

Valdez Exhibit Hall]

EXHIBIT B

BASE RENTAL PAYMENT SCHEDULE FOR FACILITIES

Base Rental Payment Date*	Principal	Interest	Aggregate Base Rental Payment	Annual Base Rental Payment
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Recording requested by
and return to:

CITY OF FRESNO
c/o Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105

RECORDING OF THIS DOCUMENT IS
EXEMPT FROM ANY FEES CHARGED
BY THE RECORDER

Attention: Philip C. Morgan, Esq.

THIRD AMENDMENT TO MASTER FACILITIES SUBLEASE

by and between

FRESNO JOINT POWERS FINANCING AUTHORITY

and the

CITY OF FRESNO

(Amending the Master Facilities Sublease dated as of April 1, 2008)

Dated as of _____ 1, 2017

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