

FIRST AMENDMENT TO FACILITIES SUBLEASE

This First Amendment to Facilities Sublease (No. 2004-2) dated as of July 1, 2020 (this "First Amendment") is made and entered into by and between the FRESNO JOINT POWERS FINANCING 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" (the "Authority"), as lessor, and the CITY OF FRESNO, a charter city and municipal corporation organized and existing under the Constitution and the laws of the State of California (the "City"), as lessee, to amend that certain Facilities Sublease (No. 2004-2), dated as of April 1, 2004, by and between the City and the Authority (the "Facilities Sublease"), which was recorded in the Official Records of the County of Fresno, California, on April 28, 2004 as Document No. 2004-0092302.

WITNESSETH

WHEREAS, pursuant to the Facilities Lease (No. 2004-2), dated as of April 1, 2004, between the City, as lessor, and the Authority, as lessee (the "Facilities Lease"), the Authority agreed to lease from the City certain real property located in the City, together with improvements, if any, from time to time located thereon (as more particularly described in the Facilities Lease, the "Facilities");

WHEREAS, pursuant to the Facilities Sublease, the City agreed to lease the Facilities back from the Authority for the purposes and in the manner described therein;

WHEREAS, pursuant to Section 2.03 of the Facilities Sublease and Section 1 of the Facilities Lease, the City has the right from time to time to substitute property as the Facilities, subject to the conditions set forth in the Facilities Lease and Facilities Sublease;

WHEREAS, the City desires to withdraw certain real property and the improvements thereon from the Facilities (as described in Exhibit A, the "Withdrawn Property") and to substitute the remaining existing real property and improvements thereon as the Facilities, and has in all respects duly authorized such withdrawal and the execution and delivery of this First Amendment;

NOW, THEREFORE, THIS FIRST AMENDMENT TO FACILITIES SUBLEASE expressly declares that in consideration of mutual covenants and agreements herein and in the Facilities Sublease contained, the City and the Authority do hereby agree and covenant as follows:

SECTION 1. Termination of Withdrawn Property. The Facilities Sublease is hereby terminated with respect to the Withdrawn Property, as described in Exhibit A, and the Withdrawn Property is hereby withdrawn as part of the Facilities.

SECTION 2. Amendment of Property Description. The property description of the Facilities as set forth in Exhibit A to the Facilities Sublease is hereby amended and replaced in its entirety by the property description set forth in Exhibit B hereto.

SECTION 3. Amendment of Section 2.03(c). Section 2.03(c) of the Facilities Sublease is hereby amended to read in full as follows:

“A Certificate of the City, accompanied by a written appraisal, from a qualified appraiser, who may but need not be an employee of the City (or other certificate of value in connection with the release of the Promenade Parking Lot), certifying that the annual fair rental value of the Facilities which will constitute the Facilities after such release will be at least equal to 100% of the maximum amount of Base Rental Payments payable under this Sublease and becoming due in the then current year ending October 1 and in any subsequent year ending October 1.”

SECTION 4. Amendment of Section 2.03(d). Section 2.03(d) of the Facilities Sublease is hereby amended to read in full as follows:

[“A CLTA 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 Facilities under this Sublease after such substitution in an amount at least equal to the lesser of (i) the amount of such insurance provided with respect to the Facilities under this Sublease prior to such substitution, or (ii) the aggregate principal amount of Bonds Outstanding. Each such insurance instrument, when issued, shall name the Trustee 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 Base Rental Payments payable by the City under this Sublease.”]

SECTION 5. California Law. This First Amendment shall be construed and governed in accordance with the laws of the State of California.

SECTION 6. Effective Upon Execution; Counterparts. This First Amendment shall become effective upon the date of recordation hereof in the office of the Fresno County Recorder. This First Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the City and the Authority shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 7. Effect of Amendment. From and after the date of recordation hereof in the office of the Fresno County Recorder, the Facilities Sublease shall be deemed to be modified and amended in accordance with this First Amendment, and the respective rights, duties and obligations under the Facilities Sublease of the City and the Authority shall thereafter be determined, exercised and enforced as specified in the Facilities Sublease subject in all respects to the modification and amendment contained herein and the terms and conditions of this First Amendment shall be deemed to be a part of the terms and conditions of the Facilities Sublease for any and all purposes.

SECTION 8. Definitions. Capitalized terms used in this First Amendment and not otherwise defined shall have the meanings given such terms in the Facilities Sublease.

IN WITNESS WHEREOF, the parties hereto have executed and attested this First Amendment to Facilities Sublease by their officers thereunto duly authorized as of the day and year first written above.

FRESNO JOINT POWERS FINANCING
AUTHORITY, as Lessor

By _____

CITY OF FRESNO, as Lessee

By _____

CONSENT OF THE TRUSTEE

The undersigned, as Trustee pursuant to that certain Trust Agreement dated as of April 1, 2004 by and between Fresno Joint Powers Financing Authority and The Bank of New York Mellon Trust Company, N.A., as successor trustee, relating to Fresno Joint Powers Financing Authority Lease Revenue Bonds (Various Capital Projects) Series 2004, hereby consents to the execution and delivery of this First Amendment to Facilities Sublease (No. 2004-2) for the purposes set forth herein.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By _____

[NOTARY ACKNOWLEDGEMENTS TO BE INCLUDED HERE]

EXHIBIT A

DESCRIPTION OF WITHDRAWN PROPERTY

(PROMENADE PARKING LOT)

All of that certain real property situated in the City of Fresno, State of California,
described as follows:

[to come]

EXHIBIT B

(THIS EXHIBIT AMENDS EXHIBIT A TO THE FACILITIES SUBLEASE)

DESCRIPTION OF FIRE STATION NO. 17 AND FIRE STATION NO. 15

All that certain real property, together with all buildings and other improvements, if any, from time to time located thereon, situated in the City of Fresno, State of California, described as follows:

[to come]

Recording Requested By:

City of Fresno, California

After Recording Mail To:

Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attn: Philip C. Morgan, Esq.

(Recording Fee Exempt under Section 6103 of the California Government Code)

FIRST AMENDMENT TO FACILITIES SUBLEASE
(NO. 2004-2)

by and between

the

FRESNO JOINT POWERS FINANCING AUTHORITY

and the

CITY OF FRESNO

Dated as of July 1, 2020

(Relating to the Facilities Sublease (No. 2004-2)
dated as of April 1, 2004
and recorded on April 28, 2004.)

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