

FIRST AMENDMENT TO FACILITY LEASE

This First Amendment to Facility Lease dated as of [_____] 1, 2017 (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 Facility Lease, dated as of May 15, 2001, by and between the City and the Authority (the “Facility Lease”), recorded in the Official Records of the County of Fresno, California, on [_____] 2001 as Document No. [_____].

WITNESSETH

WHEREAS, pursuant to the Site Lease, dated as of May 15, 2001, between the City, as lessor, and the Authority, as lessee (the “Site 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 Site Lease, the “Demised Premises”);

WHEREAS, pursuant to the Facility Lease, the City agreed to lease the Demised Premises back from the Authority for the purposes and in the manner described therein;

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

WHEREAS, the City desires to withdraw certain real property and the improvements thereon, if any, from the Demised Premises (as described in Exhibit A, the “Withdrawn Property”) and to substitute certain real property and the improvements thereon, if any, as described in Exhibit B hereto (the “Substituted Property”) and has in all respects duly authorized such withdrawal and substitution and the execution and delivery of this First Amendment;

WHEREAS, the Substituted Property is the Project financed with the Site Lease and Facility Lease; and

WHEREAS, the City desires to amend and supplement certain remedies permitted in an Event of Default under the Facility Lease;

NOW, THEREFORE, THIS FIRST AMENDMENT TO FACILITY LEASE expressly declares that in consideration of mutual covenants and agreements herein and in the Facility Lease contained, the City and the Authority do hereby agree and covenant as follows:

SECTION 10.01 Termination of Withdrawn Property. The Facility Lease 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 Demised Premises.

SECTION 11.01 Addition of Substituted Property. The Substituted Property, as described in Exhibit B hereto, is hereby added to the Facility Lease and shall constitute the “Demised Premises” for purposes of the Facility Lease.

SECTION 12.01 Amendment of Property Description. The property description of the Demised Premises as set forth in Exhibit A to the Facility Lease is hereby amended and replaced in its entirety by the property description set forth in Exhibit B hereto.

SECTION 13.01 Amendment of Section 6.01(a). The second and third paragraphs of Section 6.01(a) of the Facility Lease are hereby amended to read in full as follows:

(1) To terminate this Lease in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Demised Premises as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Demised Premises and remove all persons in possession thereof and all personal property whatsoever situated upon the Demised Premises and place such personal property in storage in any warehouse or other suitable place located within the City of Fresno, California. In the event of such termination, the City agrees to surrender immediately possession of the Demised Premises, without let or hindrance, and to pay the Authority all damages recoverable at law that the Authority may incur by reason of default by the City, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Demised Premises and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Demised Premises given pursuant to law nor any entry or re-entry by the Authority nor any proceeding in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Demised Premises nor the appointment of a receiver upon initiative of the Authority to protect the Authority’s interest under this Lease 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 acts of the parties hereto, 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.

(2) Without terminating this Lease, (i) to collect each installment of rent as it becomes due and enforce any other terms or provision hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Demised Premises, or (ii) to exercise any and all rights of re-entry upon the Demised Premises. In the event the Authority does not elect to terminate this Lease in the manner provided for in subparagraph (1) hereof, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and, if the Demised Premises are not

re-let, to pay the full amount of the rent to the end of the term of this Lease or, in the event that the Demised Premises are re-let, to pay any deficiency in rent that results therefrom; and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified, and notwithstanding any entry or re-entry by the Authority or suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such entry or re-entry or obtaining possession of the Demised Premises. Should the Authority elect to enter or re-enter as herein provided, the City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to re-let the Demised Premises, or any part thereof, from time to time, either in the Authority's name or otherwise, upon such terms and conditions and for such use and period as the Authority may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Demised Premises and to place such personal property in storage in any warehouse or other suitable place located in the City of Fresno, California, 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 out of, in connection with, or incident to any such re-entry upon and re-letting of the Demised Premises and 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-let the Demised Premises and to do all other acts to maintain or preserve the Demised Premises as the Authority deems necessary or desirable 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-letting shall constitute a surrender or termination of this Lease irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, 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 provided for in sub-paragraph (1) hereof. The City further waives the right to any rental obtained by the Authority in excess of the rental herein specified and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-letting the Demised Premises or any part thereof.

The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Demised Premises as herein provided and all claims for damages that may result from the destruction of the Demised Premises and

all claims for damages to or loss of any property belonging to the City, or any other person, that may be in or upon the Demised Premises.

SECTION 14.01 California Law. This First Amendment shall be construed and governed in accordance with the laws of the State of California.

SECTION 15.01 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 16.01 Effect of Amendment. From and after the date of recordation hereof in the office of the Fresno County Recorder, the Facility Lease shall be deemed to be modified and amended in accordance with this First Amendment, and the respective rights, duties and obligations under the Facility Lease of the City and the Authority shall thereafter be determined, exercised and enforced as specified in the Facility Lease 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 Facility Lease for any and all purposes.

SECTION 17.01 Definitions. Capitalized terms used in this First Amendment and not otherwise defined shall have the meanings given such terms in the Facility Lease.

(Remainder of Page Intentionally Left Blank)

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

FRESNO JOINT POWERS FINANCING
AUTHORITY, as Lessor

By _____
Treasurer and Controller

CITY OF FRESNO, as Lessee

By _____
Controller

CONSENT OF THE TRUSTEE

The undersigned, as Trustee pursuant to that certain Trust Agreement dated as of May 15, 2001 by and between Fresno Joint Powers Financing Authority and Wells Fargo Bank, National Association, as trustee, relating to Fresno Joint Powers Financing Authority Lease Revenue Bonds (Multi-Purpose Stadium) Series 2001B (Federally Taxable), hereby consents to the execution and delivery of this First Amendment to Facility Lease for the purposes set forth herein.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, N.A., as Trustee

By _____
Authorized Officer

[NOTARY ACKNOWLEDGEMENTS TO BE INCLUDED HERE]

EXHIBIT A
DESCRIPTION OF WITHDRAWN PROPERTY
(MULTI-PURPOSE STADIUM)

[to be added]

EXHIBIT B

(THIS EXHIBIT AMENDS EXHIBIT A TO THE FACILITY LEASE)

**DESCRIPTION OF SUBSTITUTED PROPERTY
(SAROYAN THEATRE AND FIRE STATION NO. 19)**

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 be added]

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 FACILITY LEASE

by and between

the

FRESNO JOINT POWERS FINANCING AUTHORITY

and the

CITY OF FRESNO

Dated as of [____], 2017

**(Relating to the Facility Lease dated as of May 15, 2001
and recorded on [____], 2001.)**

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