

THIRD AMENDMENT TO MASTER FACILITIES LEASE

This Third Amendment to Master Facilities Lease (the “Third Amendment to Facilities Lease”), dated as of _____ 1, 2017, by and between the CITY OF FRESNO, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the “City”), as lessor, and 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 lessee;

WITNESSETH

WHEREAS, this Third Amendment to Facilities Lease is entered into in order to amend and supplement in certain respects a lease between the City and the Authority entitled “Master Facilities Lease,” dated as of April 1, 2008, and recorded on April 29, 2008 in the office of the County Recorder of the County of Fresno (the “County Recorder”), under Recorder’s Serial No. 2008-0061752 (the “Original Lease”), 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 (the “First Amendment to Original Lease”), and as amended and supplemented by 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 “Second Amendment to Original Lease” and, collectively with the Original Lease and First Amendment to Original Lease, the “Facilities Lease”);

WHEREAS, the Authority has issued \$40,955,000 aggregate principal amount of its Lease Revenue 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 a First Supplemental Trust Agreement, dated as of May 1, 2008 (the “First Supplemental Trust Agreement” and, together with the First Supplemental Trust Agreement and the Master Trust Agreement, the “Trust Agreement”), 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 a Second Supplemental Trust Agreement, dated as of August 1, 2008 (the “Second Supplemental Trust Agreement” and, together with the Master Trust Agreement, the “Trust Agreement”), between the Authority and the Trustee;

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

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, Series 2008 C/D Bonds, 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, dated as of _____ 1, 2017 (the “Third Supplemental Trust Agreement”), between the Authority and the Trustee, for the purpose of 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 hereunder and to refinance the 2017 A/B Project;

WHEREAS, the Authority will lease back certain capital improvements to the City pursuant to the Master Facilities Sublease, dated as of April 1, 2008, as amended and supplemented by a First Amendment to Master Facilities Sublease, dated as of May 1, 2008 and as amended and supplemented by the Second Amendment to Master Facilities Sublease, dated as of August 1, 2008 (the “Facilities Sublease”) and as further amended and supplemented by the Third Amendment to Master Facilities Sublease, dated as of _____ 1, 2017 (the “Third Amendment to Facilities Sublease”), each between the Authority, as lessor, and the City, as lessee; and

WHEREAS, under the Third Amendment to 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, IT IS HEREBY MUTUALLY AGREED as follows:

Section 36. Definitions.

From and after the effective date of this Third Amendment to Facilities Lease, the definitions contained in the Facilities Lease shall be amended to read in full as follows:

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

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

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

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

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

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

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

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

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

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

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

Section 37. Effective Date.

This Third Amendment to Facilities Lease shall become effective on the date of recordation of this instrument in the office of the County Recorder of the County of Fresno, State of California, or on _____ 1, 2017, whichever is earlier, and such date of commencement shall be hereinafter referred to as the “Effective Date.”

Section 38. Addition to Facilities.

From and after the Effective Date of this instrument, the City hereby leases to the Authority and the Authority hereby hires from the City, on the terms and conditions set forth herein, the real property and improvements thereon described in Exhibit A attached hereto and made a part hereof, as such real property descriptions may be amended or modified, including removal or substitution or addition of property in accordance with the Facilities Lease, as amended, the Facilities Sublease, as amended and the Trust Agreement, as supplemented (collectively, the “Series 2017 A/B Facilities”), which real property is hereby added to the “Facilities” leased pursuant to the Facilities Lease. The Authority agrees to lease the Series 2017 A/B Facilities back to the City pursuant to the Facilities Sublease. The Series 2017 A/B Facilities are subject to Permitted Encumbrances.

Section 39. Amendment to Term of Facilities Lease.

Section 2 of the Facilities Lease is hereby amended to read in full as follows:

“The term of this Lease as to the Series 2017 A/B Facilities shall commence on the Effective Date. The term of this Lease 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 the 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 Lease 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 Lease 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.”

Section 40. Rental.

The Authority shall pay to the City as and for rental hereunder the sum of \$_____, which amount shall be applied as set forth in a Written Request of the Authority delivered pursuant to Section 20.11 of the Third Supplemental Trust Agreement.

Section 41. Effect of this Amendment.

On and after the Effective Date, each reference in the Facilities Lease to the Facilities shall mean the Facilities as amended hereby to include the Series 2017 A/B Facilities, and the term “Facilities” shall have the definition set forth in Section 36 hereof. Except as is in this Third Amendment to Facilities Lease expressly provided, the Facilities Lease shall continue in full force and effect in accordance with the terms and provisions thereof, as amended and supplemented hereby.

Section 42. Partial Invalidity.

If a court of competent jurisdiction declares any one or more of the terms, provisions, covenants or conditions of this Third Amendment to Facilities Lease invalid, unenforceable, void or voidable for any reason whatsoever, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Third Amendment to Facilities Lease shall be affected thereby, and each provision of this Third Amendment to Facilities Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 43. Section Headings.

All section headings contained herein are for reference only and are not intended to define or limit the scope of any provision of this lease.

Section 44. Execution.

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

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

CITY OF FRESNO, Lessor

By _____

Attest:

City Clerk

FRESNO JOINT POWERS FINANCING
AUTHORITY, Lessee

By _____

Attest:

Secretary

EXHIBIT A
ADDITION TO FACILITIES

[Multi-purpose Stadium

City Hall

Regional Training Center

Fire Station No. 16

Valdez Exhibit Hall]

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

Attention: Philip C. Morgan, Esq.

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

THIRD AMENDMENT TO MASTER FACILITIES LEASE

between the

CITY OF FRESNO

and

FRESNO JOINT POWERS FINANCING AUTHORITY

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

DATED AS OF _____ 1, 2017

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