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**MASTER LEASE AGREEMENT**

**by and between**

**CITY OF HUNTINGTON BEACH**

**and**

**HUNTINGTON BEACH PUBLIC FINANCING AUTHORITY**

**Dated as of [\_\_\_\_\_] 1, 2020**



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## LEASE AGREEMENT

**THIS MASTER LEASE AGREEMENT** (this “Lease Agreement”), dated as of [ ] 1, 2020, is by and between the CITY OF HUNTINGTON BEACH, a municipal corporation and chartered city organized and existing under the laws of the State of California (the “City”), as lessee, and the HUNTINGTON BEACH PUBLIC FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the “Authority”), as lessor.

### RECITALS

**WHEREAS**, in order to refinance certain capital improvements, including certain improvements to public facilities to be installed as a part of the City’s Pier Plaza project and a portion of the City’s share of the costs of a countywide 800 MHz coordinated communications system (the “1997 Project”) and other capital projects, including South Beach Phase I and II Improvements, a Beach Maintenance Facility, energy retrofitting of various facilities, design costs of the City’s Sports Complex, water system improvements and the City’s Emerald Cove Senior Housing project (the “2000 Project”), the Authority issued its Huntington Beach Public Financing Authority Lease Revenue Refunding Bonds, 2010 Series A (the “Prior 2010A Bonds”), payable from certain lease payments to be made by the City; and

**WHEREAS**, in order to refinance certain capital improvements, including certain improvements to the Civic Center, including the Police Administration Building (the “1993 Project”) and the Huntington Central Park Sports Complex and certain beach improvements along Pacific Coast Highway from First Street and Pacific Coast Highway to Huntington Street and Pacific Coast Highway (the “2001 Project” and together with the Prior 1993 Project, the 1997 Project and the 2000 Project, the “Projects”), the Authority issued its Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds, 2011 Series A (Capital Improvement Refinancing Project) (the “Prior 2011A Bonds” and, together with the Prior 2010A Bonds, the “Prior Bonds”), payable from certain lease payments to be made by the City; and

**WHEREAS**, in order to achieve certain savings, the City and the Authority desire to refund the Prior Bonds and, therefore, refinance the Projects; and

**WHEREAS**, in order to refund the Prior Bonds and, therefore, refinance the Projects, the City is leasing certain real property, and the improvements thereto, consisting of Donald W. Kiser Corporation Yard (the “Property”), to the Authority pursuant to a Master Site Lease, dated as of the date hereof (the “Site Lease”), and the City is subleasing the Property back from the Authority pursuant to this Lease Agreement; and

**WHEREAS**, the Property is more particularly described in Exhibit A hereto; and

**WHEREAS**, in order to provide the funds necessary to refund the Prior Bonds and, therefore, refinance the Projects, the Authority and the City desire to provide for the issuance of Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds, 2020 Series A (Tax-Exempt) (the “Series 2020A Bonds”), and Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds,

2020 Series B (Federally Taxable) (the “Series 2020B Bonds” and, together with the Series 2020A Bonds, the “Series 2020 Bonds”), in the respective aggregate principal amounts of \$[\_\_\_\_\_] and \$[\_\_\_\_\_] , pursuant to the Master Indenture, dated as of the date hereof (the “Indenture”), by and among the Authority, the City and U.S. Bank National Association, as trustee (the “Trustee”), which bonds are payable from the base rental payments to be made by the City pursuant to this Lease Agreement; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease Agreement;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Lease Agreement and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Indenture.

“**Additional Rental Payments**” means all amounts payable by the City as Additional Rental Payments pursuant to Section 3.02 hereof.

“**Authority**” means the Huntington Beach Public Financing Authority, a joint powers authority organized and existing under the laws of the State of California.

“**Authority Event of Default**” means an event described as such in Section 8.08.

“**Base Rental Deposit Date**” means the fifth Business Day next preceding each Interest Payment Date.

“**Base Rental Payments**” means all amounts payable to the Authority by the City as Base Rental Payments pursuant to Section 3.01 hereof.

“**City**” means the City of Huntington Beach, a municipal corporation and chartered city organized and existing under the laws of the State of California.

“**Closing Date**” means [\_\_\_\_\_], 2020.

“**Event of Default**” means an event described as such in Section 8.01.

“**Indenture**” means the Master Indenture, dated as of the date hereof, by and among the Authority, the City and the Trustee, as originally executed and as it may from time to time be amended or supplemented in accordance with the provisions thereof.

“**Independent Insurance Consultant**” means a nationally recognized independent actuary, insurance company or broker that has actuarial personnel experienced in the area of insurance for which the City is to be self-insured, as may from time to time be designated by the City.

“**Laws and Regulations**” means, with respect to the Property, any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Property.

“**Lease Agreement**” means this Master Lease Agreement, as originally executed and as it may from time to time be amended in accordance with the provisions hereof.

“**Net Proceeds**” means any insurance proceeds or condemnation award paid with respect to any of the Property, which proceeds or award, after payment therefrom of all reasonable expenses incurred in the collection thereof, are in an amount greater than \$50,000.

“**Permitted Encumbrances**” means, with respect to the Property (a) liens for general *ad valorem* taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Section 4.11 hereof, permit to remain unpaid, (b) this Lease Agreement, (c) the Site Lease, (d) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law, (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date, and (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Closing Date which the City certifies in writing do not affect the intended use of the Property or impair the security granted to the Trustee for the benefit of the Owners of the Bonds by the Indenture and to which the Authority consents in writing.

“**Property**” means the real property described in Exhibit A hereto, and any improvements thereto.

“**Rental Payments**” means, collectively, the Base Rental Payments and the Additional Rental Payments.

“**Rental Period**” means the period from the Closing Date through [June 30, 20\_\_] and, thereafter, the twelve-month period commencing on July 1 of each year during the term of this Lease Agreement.

“**Scheduled Termination Date**” means [May 1, 20\_\_].

“**Site Lease**” means the Master Site Lease, dated as of the date hereof, by and between the City and the Authority, as originally executed and as it may from time to time be amended in accordance with the provisions thereof and hereof.

“**Trustee**” means U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, or any successor thereto as Trustee under the Indenture substituted in its place as provided therein.

## ARTICLE II

### LEASE OF PROPERTY; TERM

**Section 2.01. Lease of Property.** (a) The Authority hereby leases to the City and the City hereby leases from the Authority the Property, on the terms and conditions hereinafter set forth, subject to all Permitted Encumbrances.

(b) The leasing of the Property by the City to the Authority pursuant to the Site Lease shall not effect or result in a merger of the City's leasehold estate in the Property as lessee under this Lease Agreement and its fee estate in the Property as lessor under the Site Lease, and the Authority shall continue to have a leasehold estate in the Property pursuant to the Site Lease throughout the term thereof and hereof. This Lease Agreement shall constitute a sublease with respect to the Property. The leasehold interest in the Property granted by the City to the Authority pursuant to the Site Lease is and shall be independent of this Lease Agreement and this Lease Agreement shall not be an assignment or surrender of the leasehold interest in the Property granted to the Authority under the Site Lease.

**Section 2.02. Term; Occupancy.** (a) The term of this Lease Agreement shall commence on the Closing Date and shall end on the Scheduled Termination Date, unless such term is extended or sooner terminated as hereinafter provided. If, on the Scheduled Termination Date, all of the Bonds shall not be fully paid or deemed to have been paid in accordance with Article IX of the Indenture, or any Rental Payments shall remain due and payable or shall have been abated at any time, then the term of this Lease Agreement shall be extended until the date upon which all of the Bonds shall be fully paid or deemed to have been paid in accordance with Article IX of the Indenture, and all Rental Payments due and payable shall have been paid in full; provided, however, that the term of this Lease Agreement shall in no event be extended more than ten years beyond the Scheduled Termination Date. If, prior to the Scheduled Termination Date, all of the Bonds shall be fully paid or deemed to have been paid in accordance with Article IX of the Indenture, and all Rental Payments due and payable shall have been paid in full, the term of this Lease Agreement shall end simultaneously therewith.

(b) The City shall take possession of the Property on the Closing Date.

## ARTICLE III

### RENTAL PAYMENTS

**Section 3.01. Base Rental Payments.** (a) *General.* The Rental Payments, including Base Rental Payments, for each Rental Period shall be paid by the City to the Authority for and in consideration of the right to use and occupy the Property and in consideration of the continued right to the quiet use and enjoyment thereof during such Rental Period.

The obligation of the City to pay the Base Rental Payments does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City or the State of California is obligated to levy or pledge any form of taxation or for which the City or the State of California has levied or pledged any form of taxation.

(b) *Base Rental Payments.* Subject to the provisions of Section 3.06 hereof, the City shall, on each Base Rental Deposit Date, pay to the Authority a Base Rental Payment in an amount equal to the principal of, and interest on, the Bonds due and payable on the next succeeding Principal Payment Date or Interest Payment Date, as applicable, including any such principal due and payable by reason of mandatory sinking fund redemption of the Bonds; provided, however, that the amount of such Base Rental Payment shall be reduced by the amount, if any, available in the Payment Fund, the Principal Account or the Interest Account on such Base Rental Deposit Date to pay such principal of, or interest on, the Bonds.

(c) *Payments other than Regularly Scheduled Payments.* If the term of this Lease Agreement shall have been extended pursuant to Section 2.02 hereof, the obligation of the City to pay Rental Payments shall continue to and including the Base Rental Deposit Date preceding the date of termination of this Lease Agreement (as so extended pursuant to Section 2.02 hereof). Upon such extension, the Base Rental Payments payable during such extended term shall be established so that such Base Rental Payments will in the aggregate be sufficient to pay the unpaid principal of, and interest accrued and to accrue on, the Bonds; provided, however, that the Rental Payments payable in any Rental Period shall not exceed the annual fair rental value of the Property.

**Section 3.02. Additional Rental Payments.** The City shall also pay, as Additional Rental Payments, such amounts as shall be required for the payment of the following:

(a) all taxes and assessments of any type or nature charged to the Authority or the City or affecting the Property or the respective interests or estates of the Authority or the City therein;

(b) all reasonable administrative costs of the Authority relating to the Property including, but without limiting the generality of the foregoing, salaries, wages, fees and expenses payable by the Authority under the Indenture, fees of auditors, accountants, attorneys or engineers, and all other necessary and reasonable administrative costs of the Authority or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Indenture or this Lease Agreement or to defend the Authority and its members, officers, agents and employees;

(c) insurance premiums for all insurance required pursuant to Article V hereof;

(d) any amounts with respect to the Bonds required to be rebated to the federal government in accordance with section 148(f) of the Code; and

(e) all other payments required to be paid by the City under the provisions of this Lease Agreement or the Indenture.

Amounts constituting Additional Rental Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Trustee to the City stating the amount of Additional Rental Payments then due and payable and the purpose thereof.

**Section 3.03. Fair Rental Value.** The parties hereto have agreed and determined that the Rental Payments are not in excess of the fair rental value of the Property. In making such determination of fair rental value, consideration has been given to the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public. Payments of the Rental Payments for the Property during each Rental Period shall constitute the total rental for said Rental Period.

**Section 3.04. Payment Provisions.** Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority at the Principal Office of the Trustee, or such other place or entity as the Authority shall designate. Notwithstanding any dispute between the Authority and the City, the City shall make all Rental Payments when due without deduction or offset of any kind and shall not withhold any Rental Payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for said Rental Payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent Rental Payments due hereunder or refunded at the time of such determination.

**Section 3.05. Appropriations Covenant.** The City covenants to take such action as may be necessary to include all Rental Payments due hereunder in its annual budgets and to make necessary annual appropriations for all such Rental Payments. The covenants on the part of the City contained in this Section shall be deemed to be and shall be construed to be duties imposed by law and it shall be 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 such covenants.

**Section 3.06. Rental Abatement.** Except as otherwise specifically provided in this Section, during any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the City's right to use and occupy any portion of the Property, Rental Payments shall be abated, proportionately, and the City waives the benefits of California Civil Code Sections 1932(2) and 1933(4) and any and all other rights to terminate this Lease Agreement by virtue of any such interference, and this Lease Agreement shall continue in full force and effect. The amount of such abatement shall be agreed upon by the City and the Authority. The City and the Authority shall provide the Trustee with a certificate setting forth the amount of such abatement and the basis therefor. Such abatement shall continue for the period commencing with the date of interference

resulting from such damage, destruction, condemnation or title defect and, with respect to damage to or destruction of the Property, ending with the substantial completion of the work of repair or replacement of the Property, or the portion thereof so damaged or destroyed, and the term of this Lease Agreement shall be extended as provided in Section 2.02 hereof; provided, however, that such term shall in no event be extended more than ten years beyond the Scheduled Termination Date.

Notwithstanding the foregoing, to the extent that moneys are available for the payment of Rental Payments in any of the funds and accounts established under the Indenture, Rental Payments shall not be abated as provided above but, rather, shall be payable by the City as a special obligation payable solely from said funds and accounts.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES; COVENANTS AND AGREEMENTS

**Section 4.01. Power and Authority of the City.** The City represents and warrants to the Authority that (a) the City has the full power and authority to enter into, to execute and to deliver this Lease Agreement, the Site Lease and the Indenture, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Lease Agreement, the Site Lease and the Indenture, and (b) the Property is zoned for use for governmental related facilities.

**Section 4.02. Power and Authority of the Authority.** The Authority represents and warrants to the City that the Authority has the full power and authority to enter into, to execute and to deliver this Lease Agreement, the Site Lease and the Indenture, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Lease Agreement, the Site Lease and the Indenture.

**Section 4.03. Net-Net-Net Lease.** This Lease Agreement shall be, and shall be deemed and construed to be, a “net-net-net lease” and the Rental Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever and notwithstanding any dispute between the City and the Authority.

**Section 4.04. Disclaimer of Warranties.** THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE PROPERTY AS IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY.

**Section 4.05. Quiet Enjoyment.** So long as no Event of Default shall have occurred and be continuing, the City shall at all times during the term of this Lease Agreement peaceably and quietly have, hold and enjoy the Property without suit, trouble or hindrance from the Authority.

**Section 4.06. Right of Entry.** The Authority shall have the right to enter upon and to examine and inspect the Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the Authority’s rights or obligations under this Lease Agreement, and for all other lawful purposes.

**Section 4.07. Use of the Property.** The City shall not use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease Agreement. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Property) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Property; provided, however, that the City may contest in good faith the validity or application of any such law or rule

in any reasonable manner which does not, in the opinion of the Authority, adversely affect the estate of the Authority in and to any of the Property or its interest or rights under this Lease Agreement.

**Section 4.08. Maintenance and Utilities.** As part of the consideration for rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City. In exchange for the Rental Payments, the Authority agrees to provide only the Property.

**Section 4.09. Additions to Property.** Subject to Section 4.12 hereof, the City and any sublessee shall, at its own expense, have the right to make additions, modifications and improvements to the Property. To the extent that the removal of such additions, modifications or improvements would not cause material damage to the Property, such additions, modifications and improvements shall remain the sole property of the City or such sublessee, and neither the Authority nor the Trustee shall have any interest therein. Such additions, modifications and improvements shall not in any way damage the Property or cause it to be used for purposes other than those authorized under the provisions of state and federal law, and the Property, upon completion of any addition, modification or improvement made pursuant to this Section, shall be of a value which is at least equal to the value of the Property immediately prior to the making of such addition, modification or improvement.

**Section 4.10. Installation of City's Equipment.** The City and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City or such sublessee, and neither the Authority nor the Trustee shall have any interest therein. The City or such sublessee may remove or modify such equipment or other personal property at any time, provided that such party shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items, and the Property, upon completion of any installation, modification or removal made pursuant to this Section, shall be of a value which is at least equal to the value of the Property immediately prior to the making of such installation, modification or removal. Nothing in this Lease Agreement shall prevent the City or any sublessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, 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 shall attach to any part of the Property.

**Section 4.11. Taxes.** The City shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Authority or the City or affecting the Property or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as and when the same become due.

Upon notice to the Authority and the Trustee, the City or any sublessee may, at the City's or such sublessee'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 or the Trustee shall notify the City or such sublessee that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property, or any part thereof, will be subject to loss or forfeiture, in which event the City or such sublessee shall 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 and the Trustee.

**Section 4.12. Liens.** In the event the City shall at any time during the term of this Lease Agreement cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Property, the City shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon or about the Property and which may be secured by a mechanics', materialmen's or other lien against the Property or the Authority's interest therein, and shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that, if the City desires to contest any such lien, it may do so as long as such contest is in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the City shall forthwith pay and discharge said judgment.

**Section 4.13. Compliance with Law, Regulations, Etc.** The City represents and warrants that, after due inquiry, it has no knowledge and has not given or received any written notice indicating that the Property or the use thereof or any practice, procedure or policy employed by it in the conduct of its business with respect to the Property materially violates any Laws and Regulations.

**Section 4.14. No Condemnation.** The City shall not exercise the power of condemnation with respect to the Property. If for any reason the foregoing covenant shall be held by a court of competent jurisdiction to be unenforceable and the City condemns the Property or if the City breaches such covenant, the City agrees that the value of the City's leasehold estate hereunder in the Property shall be not less than the greater of (a) the amount sufficient to redeem the Bonds pursuant to the Indenture if the Bonds are then subject to redemption, or (b) the amount sufficient to defease the Bonds to the first available redemption date in accordance with the Indenture if the Bonds are not then subject to redemption.

**Section 4.15. Authority's Purpose.** So long as any Bonds are Outstanding, the Authority shall not engage in any activities inconsistent with the purposes for which the Authority is organized, as set forth in the agreement pursuant to which the Authority was created.

## ARTICLE V

### INSURANCE

**Section 5.01. Public Liability and Property Damage Insurance.** (a) The City shall maintain reasonable and customary liability insurance. The insurance required under this subsection may be maintained in whole or in part in the form of self-insurance, provided that such self-insurance complies with the provisions of Section 5.03 hereof.

(b) The City shall maintain or cause to be maintained insurance insuring the Property against fire, lightning and all other risks covered by an extended coverage endorsement (all risk basis excluding earthquake) to be written at full replacement cost of the Property structures, subject to a minimum \$25,000 loss deductible provision. Full replacement cost shall not be less than the aggregate principal amount of the Outstanding Bonds. The insurance required under this subsection may be maintained in whole or in part in the form of self-insurance, provided that such self-insurance complies with the provisions of Section 5.03 hereof.

(c) The City shall maintain rental interruption insurance to cover the Authority's loss, total or partial, of Base Rental Payments resulting from the loss, total or partial, of the use of any part of the Property as a result of any of the hazards required to be covered pursuant to subsection (b) of this Section in an amount not less than an amount equal to two times Maximum Annual Debt Service. The insurance required under this subsection may not be maintained in whole or in part in the form of self-insurance.

(d) The insurance required by this Section shall be provided by insurers rated "A" or better by Fitch, A.M. Best Company or S&P.

**Section 5.02. Additional Insurance Provision; Form of Policies.** The City shall pay or cause to be paid when due the premiums for all insurance policies required by Section 5.01 hereof. All such policies shall provide that the Trustee shall be given 30 days notice of the expiration thereof, any intended cancellation thereof or any reduction in the coverage provided thereby. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

The City shall, following receipt of a written request of the Trustee, cause to be delivered to the Trustee on or before August 15 of each year, commencing [August 15, 20\_\_], a schedule of the insurance policies being maintained in accordance herewith and a Written Certificate of the City stating that such policies are in full force and effect and that the City is in full compliance with the requirements of this Article. The Trustee shall be entitled to rely upon said Written Certificate of the City as to the City's compliance with this Article. The Trustee shall not be responsible for the sufficiency of the coverage or the amounts of such policies.

**Section 5.03. Self-Insurance.** Insurance provided through a California joint powers authority of which the City is a member or with which the City contracts for insurance shall be deemed to be self-insurance for purposes hereof. Any self-insurance maintained by the City pursuant to this Article shall be approved in writing by an Independent Insurance Consultant or the City's Risk Manager.

**Section 5.04. Title Insurance.** The City shall provide, at its own expense, one or more CLTA title insurance policies for the Property, in the aggregate amount of not less than the aggregate principal amount of the Bonds. Said policy or policies shall insure (a) the fee interest of the City in the Property, (b) the Authority's ground leasehold estate in the Property under the Site Lease, and (c) the City's leasehold estate hereunder in the Property, subject only to Permitted Encumbrances; provided, however, that one or more of said estates may be insured through an endorsement to such policy or policies. All Net Proceeds received under said policy or policies shall be deposited with the Trustee and applied as provided in Section 5.02 of the Indenture. So long as any of the Bonds remain Outstanding, each policy of title insurance obtained pursuant hereto or required hereby shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Owners.

## ARTICLE VI

### EMINENT DOMAIN; RIGHT TO REDEEM

**Section 6.01. Eminent Domain.** If all of the Property (or portions thereof such that the remainder is not usable for public purposes by the City) shall be taken under the power of eminent domain, the term hereof shall cease as of the day that possession shall be so taken. If less than all of the Property shall be taken under the power of eminent domain and the remainder is usable for public purposes by the City at the time of such taking, then this Lease Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the Rental Payments in accordance with the provisions of Section 3.06 hereof. So long as any Bonds shall be Outstanding, any award made in eminent domain proceedings for the taking of the Property, or any portion thereof, shall be paid to the Trustee and applied to the redemption of Bonds as provided in Sections 3.01 and 5.01 of the Indenture. Any such award made after all of the Bonds, and all other amounts due under the Indenture and hereunder, have been fully paid, shall be paid to the City.

**Section 6.02. Right to Redeem Bonds.** (a) [The City shall have the right to cause the Bonds to be redeemed pursuant to, and in accordance with the provisions of, Section 3.02 of the Indenture by providing the Trustee with funds sufficient for such purpose (which funds may be derived by the City from any source) and giving notice of the City's exercise of such right as provided in subsection (b) of this Section.]

(b) [In order to exercise its right to cause Bonds to be redeemed pursuant to subsection (a) of this Section, the City shall give written notice to the Trustee of its intention to exercise such right, specifying the date on which such redemption shall be made, which date shall be not less than 35 days from the date such notice is given (unless otherwise agreed by the Trustee), and specifying the Series, maturities and amounts of Bonds to be redeemed.]

(c) The City shall have the right to cause Bonds to be deemed to have been paid pursuant to, and in accordance with the provisions of, Section 9.02 of the Indenture by providing the Trustee with funds sufficient for such purpose (which funds may be derived by the City from any source) and providing and delivering, or causing to be provided and delivered the other items required pursuant to said Section 9.02 to be provided or delivered in connection with such deemed payment.

## ARTICLE VII

### ASSIGNMENT AND SUBLETTING; SUBSTITUTION OR RELEASE; TITLE

**Section 7.01. Assignment and Subleasing.** Neither this Lease Agreement nor any interest of the City hereunder shall be sold, mortgaged, pledged, assigned, or transferred by the City by voluntary act or by operation of law or otherwise; provided, however, that the Property may be subleased in whole or in part by the City, but only subject to the following conditions, which are hereby made conditions precedent to any such sublease:

(a) this Lease Agreement and the obligation of the City to make all Rental Payments hereunder shall remain the primary obligation of the City;

(b) the City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease;

(c) no such sublease by the City shall cause the Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California;

(d) any sublease of the Property by the City shall explicitly provide that such sublease is subject to all rights of the Authority under this Lease Agreement, including, the right to re-enter and re-let the Property or terminate this Lease Agreement upon a default by the City; and

(e) the City shall have filed or caused to be filed with the Authority and the Trustee an Opinion of Counsel to the effect that such sublease will not, in and of itself, cause the interest on Tax-Exempt Bonds to be included in gross income for federal income tax purposes.

**Section 7.02. Substitution or Release of the Property.** Subject to the provisions of this Section, the City shall have the right to substitute alternate real property for any portion of the Property or to release a portion of the Property from this Lease Agreement. All costs and expenses incurred in connection with any such substitution or release shall be borne by the City. Notwithstanding any substitution or release pursuant to this Section, there shall be no reduction in or abatement of the Base Rental Payments due from the City hereunder as a result of such substitution or release. Any such substitution or release of any portion of the Property shall be subject to the following conditions, which are hereby made conditions precedent to such substitution or release:

(a) a qualified employee of the City or an independent certified real estate appraiser selected by the City shall have found (and shall have delivered a certificate to the Trustee setting forth its findings) that (i) the sum of Base Rental Payments plus Additional Rental Payments due under the Lease Agreement in any Rental Period is not in excess of the annual fair rental value of the Property, as constituted after such substitution or release, and (ii) the Property, as constituted after such substitution or release, has a useful life equal to or greater than the maximum remaining term of this Lease Agreement (including extensions thereof under Section 2.02 hereof);

(b) the City shall have obtained or caused to be obtained an CLTA title insurance policy or policies with respect to any substituted property in the amount of the fair market value of such

substituted property (which fair market value shall have been determined by a qualified employee of the City or an independent certified real estate appraiser), of the type and with the endorsements described in Section 5.04 hereof;

(c) the City shall have filed or caused to be filed with the Trustee an Opinion of Counsel to the effect that such substitution or release will not, in and of itself, cause the interest on Tax-Exempt Bonds to be included in gross income for federal income tax purposes;

(d) the City shall have given, or shall have made arrangements for the giving of, any notice of the occurrence of such substitution or release required to be given pursuant to paragraph [( )] of subsection ( ) of Section 5 of the Continuing Disclosure Certificate];

(e) the City, the Authority and the Trustee shall have executed, and the City shall have caused to be recorded with the county recorder of the county in which the Property is located, any document necessary to reconvey to the City the portion of the Property being substituted or released and to include any substituted real property in the description of the Property contained herein and in the Site Lease; and

(f) the City shall have certified to the Trustee that the substituted real property is essential for performing the City's governmental functions.

**Section 7.03. Title to Property.** Upon the termination or expiration of this Lease Agreement (other than as provided in Section 8.02 hereof), and the first date upon which no Bonds are any longer Outstanding, all right, title and interest in and to the Property shall vest in the City. Upon any such termination or expiration, the Authority shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.01. Events of Default.** The occurrence, from time to time, of any one or more of the following events shall constitute an Event of Default under this Lease Agreement:

(a) the failure of the City to pay any Rental Payment payable hereunder when the same becomes due and payable, time being expressly declared to be of the essence in this Lease Agreement;

(b) the failure by the City to observe and perform any of the other covenants, agreements or conditions on its part in this Lease Agreement contained, if such failure shall have continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the City by the Trustee, the Authority or the Owners of not less than 5% in aggregate principal amount of the Bonds at the time Outstanding; provided, however, that if, in the reasonable opinion of the City, the failure stated in the notice can be corrected, but not within such 30 day period, such failure shall not constitute an Event of Default if corrective action is instituted by the City within such 30 day period and the City shall thereafter diligently and in good faith cure such failure in a reasonable period of time, provided, further, however, that the period of time for such cure shall not exceed 90 days without the prior written consent of the Authority;

(c) except as otherwise expressly permitted by this Lease Agreement, the assignment or transfer, either voluntarily or by operation of law or otherwise, of the City's interest in this Lease Agreement or any part thereof without the written consent of the Authority;

(d) the abandonment of the Property by the City; or

(e) the commencement by the City of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.

**Section 8.02. Action on Default.** (a) In each and every case during the continuance of an Event of Default hereunder, the Authority, in addition to all other rights and remedies it may have at law, shall have the option either to exercise the rights provided for in subsection (b) of this Section or to exercise the rights provided for in subsection (c) of this Section.

(b) In each and every case during the continuance of an Event of Default hereunder, the Authority shall have the right to terminate this Lease Agreement in the manner hereinafter provided, notwithstanding any re-entry or re-letting of the Property as provided in subsection (c) of this Section, and to re-enter the Property and remove all persons in possession thereof and all personal property whatsoever situated upon the Property and place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the City. In the event of such termination, the City agrees to surrender immediately possession of the Property, 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 Property 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 Rental Payments or to deliver up possession of the Property 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 Property nor the appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Lease Agreement shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement 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 Agreement. The City covenants and agrees that no surrender of the Property or of the remainder of the term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated by the Authority by such written notice.

(c) In each and every case during the continuance of an Event of Default hereunder, the Authority shall have the right, without terminating this Lease Agreement (i) to collect each installment of Rental Payments as the same become due and enforce any other terms or provisions hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Property, or (ii) to exercise any and all rights of entry and re-entry upon the Property. In the event the Authority does not elect to terminate this Lease Agreement in the manner provided for in subsection (b) of this Section, 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 Property is not re-let, to pay the full amount of the Rental Payments to the end of the term of this Lease Agreement or, in the event that the Property is re-let, to pay any deficiency in Rental Payments that results therefrom; and further agrees to pay said Rental Payments and/or Rental Payment deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of Rental Payments hereunder, notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years Rental Payments in excess of the Rental Payments 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 re-entry or obtaining possession of the Property. Should the Authority elect to 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 Property, 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 Property and to place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the City, and the City hereby indemnifies 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 Property 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 Agreement constitute full and sufficient notice of the right of the Authority to re-let the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-letting shall constitute a surrender or termination of this Lease Agreement 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 Agreement shall vest in the Authority to be effected in the sole and exclusive manner provided for in subsection (b) of this

Section. The City further agrees to pay the Authority the cost of any alterations or additions to the Property necessary to place the Property in condition for re-letting immediately upon notice to the City of the completion and installation of such additions or alterations. The term “re-let” or “re-letting” as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Authority of the Property.

(d) 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 Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property 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 Property.

(e) Notwithstanding anything herein to the contrary, the termination of this Lease Agreement by the Authority on account of an Event of Default hereunder shall not effect or result in a termination of the lease of the Property by the City to the Authority pursuant to the Ground Lease.

**Section 8.03. Other Remedies.** In addition to the other remedies provided for in Section 8.02 hereof, during the continuance of an Event of Default hereunder, the Authority shall be entitled to proceed to protect and enforce the rights vested in the Authority by this Lease Agreement or by law. The provisions of this Lease Agreement and the duties of the City and of its board, officers or employees shall be enforceable by the Authority by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Authority shall have the right to bring the following actions:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any board member, officer or employee thereof, and to compel the City or any such board member, officer or employee to perform or carry out its or his or her duties under law and the agreements and covenants required to be performed by it or him or her contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(c) by suit, action or proceeding in any court of competent jurisdiction, to require the City and its board, officers and employees to account as if it or they were the trustee or trustees of an express trust.

**Section 8.04. No Acceleration.** Notwithstanding anything to the contrary contained in this Lease Agreement, the Authority shall have no right to accelerate Rental Payments upon the occurrence or continuance of a default or an Event of Default hereunder.

**Section 8.05. Remedies Not Exclusive.** Subject to the provisions of Section 8.02 hereof, no remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any law. If any statute or rule of law validly shall limit the remedies given to the Authority

hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

**Section 8.06. Waiver.** No delay or omission of the Authority to exercise any right or power arising from the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein, and every power and remedy given by this Lease Agreement to the Authority may be exercised from time to time and as often as may be deemed expedient. A waiver of a particular default or Event of Default shall not be deemed to be a waiver of any other default or Event of Default or of the same default or Event of Default subsequently occurring. The acceptance of Rental Payments hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Lease Agreement.

**Section 8.07. Attorney's Fees.** In the event the Authority shall prevail in any action brought to enforce any of the terms and provisions of this Lease Agreement, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder.

**Section 8.08. Authority Event of Default; Action on Authority Event of Default.** The failure by the Authority to observe and perform any covenants, agreements or conditions on its part in this Lease Agreement contained, including under Section 4.05 and Section 4.15, if such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the Authority and the Trustee, by the City, shall constitute an Authority Event of Default under this Lease Agreement; provided, however, that if, in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 60 day period, such failure shall not constitute an Authority Event of Default if corrective action is instituted by the Authority within such 60 day period and the Authority shall thereafter diligently and in good faith cure such failure in a reasonable period of time. In each and every case upon the occurrence and during the continuance of an Authority Event of Default by the Authority hereunder, the City shall have all the rights and remedies permitted by law.

## ARTICLE IX

### AMENDMENTS

**Section 9.01. Amendments.** (a) This Lease Agreement and the Site Lease, and the rights and obligations of the City and the Authority hereunder and thereunder, may be amended at any time by an amendment hereto or thereto, which shall become binding upon execution by the City and the Authority, but only with the prior written consent of the Owners of a majority of the aggregate principal amount of Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 10.06 of the Indenture. No such amendment shall (i) extend the payment date of any Base Rental Payment or reduce the amount of any Base Rental Payment without the prior written consent of the Owner of each Bond so affected, (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required for any amendment of this Lease Agreement or the Site Lease to become binding without the prior written consent of the Owners of all the Bonds then Outstanding, or (iii) amend this Section without the prior written consent of the Owners of all the Bonds then Outstanding.

(b) This Lease Agreement and the Site Lease, and the rights and obligations of the City and the Authority hereunder and thereunder, may also be amended at any time by an amendment hereto or thereto, which shall become binding upon execution by the City and the Authority, without the written consents of any Owners, for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City or the Authority herein or therein contained other covenants and agreements thereafter to be observed, or to surrender any right or power herein or therein reserved to or conferred upon the City or the Authority;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision contained in herein or therein or in regard to questions arising hereunder or thereunder which the City or the Authority may deem desirable or necessary and not inconsistent herewith;

(iii) to provide for the issuance of one or more Series of Additional Bonds, and to provide the terms and conditions under which such Series of Additional Bonds may be issued, subject to and in accordance with the provisions of Section 2.04 and Section 2.05 of the Indenture;

(iv) to provide for the substitution or release of a portion of the Property in accordance with the provisions of Section 7.02 hereof;

(v) to make such additions, deletions or modifications as may be necessary or appropriate to assure the exclusion from gross income for federal income tax purposes of interest on Tax-Exempt Bonds or maintain any federal interest subsidies expected to be received with respect to any Bonds; or

(vi) to make such other changes herein or therein as the City or the Authority may deem desirable or necessary, and which shall not materially adversely affect the interests of the Owners.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Authority Not Liable.** The Authority and its directors, officers, agents and employees, shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Property. To the extent permitted by law, the City shall, at its expense, indemnify and hold the Authority and its directors, officers, agents and employees harmless against and from any and all claims by or on behalf of any Person arising from the acquisition, construction, occupation, use, operation, maintenance, possession, conduct or management of any work done in or about the Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Property or the occupancy or use thereof, but excepting the negligence or willful misconduct of the persons or entity seeking indemnity. In no event shall the Authority be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease Agreement or the City's use of the Property.

**Section 10.02. Assignment to Trustee; Effect.** The parties hereto understand and agree that, upon the execution and delivery of the Indenture (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Authority in and to this Lease Agreement will be sold, assigned and transferred to the Trustee for the benefit of the Owners of the Bonds. The City hereby consents to such sale, assignment and transfer. Upon the execution and delivery of the Indenture, references in the operative provisions hereof to the Authority shall be deemed to be references to the Trustee, as assignee of the Authority.

**Section 10.03. Gender and References; Article and Section Headings.** The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders. The headings or titles of the several Articles and Sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. Unless the context otherwise clearly requires, all references herein to "Articles," "Sections," subsections or clauses are to the corresponding Articles, Sections, subsections or clauses hereof, and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section, subsection or clause hereof.

**Section 10.04. Validity and Severability.** If for any reason any one or more of the agreements, covenants or terms of this Lease Agreement shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the City or by the Authority, all of the remaining agreements, covenants and terms hereof shall nonetheless continue in full force and effect. If for any reason it is held by such a court that any agreement, covenant or term of this Lease Agreement required to be observed or performed by the City, including the covenant to pay Rental Payments, is unenforceable for the full term hereof, then and in such event this Lease Agreement is and shall be deemed to be a lease from year to year under which the Rental Payments are to be paid by the City annually in consideration of the right of the City to possess, occupy and



**IN WITNESS WHEREOF**, the parties hereto have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**CITY OF HUNTINGTON BEACH**

By: \_\_\_\_\_

**HUNTINGTON BEACH PUBLIC  
FINANCING AUTHORITY**

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Robin Estanislau,  
Secretary





**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

All that certain real property situated in the County of Orange, State of California, and any improvements thereto, described as follows:

**CERTIFICATE OF ACCEPTANCE**

In accordance with Section 27281 of the California Government Code, this is to certify that the interest in the real property conveyed by the Master Lease Agreement, dated as of [\_\_\_\_\_] 1, 2020, by and between the City of Huntington Beach, a municipal corporation and chartered city organized and existing under the laws of the State of California (the “City”) and the Huntington Beach Public Financing Authority, a joint powers authority organized and existing under the laws of the State of California (the “Authority”), from the Authority to the City, is hereby accepted by the undersigned on behalf of the City pursuant to authority conferred by resolution of the City Council of the City adopted on [\_\_\_\_\_] , 2020, and the City consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 2020

**CITY OF HUNTINGTON BEACH**

By: \_\_\_\_\_