Recording requested by  
and return to: 

COUNTY OF SANTA CLARA  
c/o Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, California  94105-2669  

Attention: Mary A. Collins, Esq.

______________________________

SUBLEASE

by and between 

COUNTY OF SANTA CLARA

and the 

SANTA CLARA COUNTY CENTRAL FIRE 
PROTECTION DISTRICT

FOR THE FIRE DISTRICT FACILITIES 

Dated as of June 1, 2020

______________________________

THIS TRANSACTION IS EXEMPT FROM FILING FEES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 6103 AND TRANSFER TAXES PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 11928
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Section 1.01 Definitions</td>
<td>2</td>
</tr>
<tr>
<td>II</td>
<td>Lease of District Demised Premises and Project; Term</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.01 Lease of Facilities</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.02 Term; Occupancy</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.03 Substitution</td>
<td>5</td>
</tr>
<tr>
<td>III</td>
<td>Rental Payments; Use of Proceeds</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 3.01 District Base Rental Payments</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 3.02 Additional Payments</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 3.03 Fair Rental Value</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Section 3.04 Payment Provisions</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Section 3.05 Appropriations Covenant</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Section 3.06 Rental Abatement</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Section 3.07 Use of Proceeds</td>
<td>9</td>
</tr>
<tr>
<td>IV</td>
<td>Maintenance; Alterations and Additions</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Section 4.01 Construction of District Project</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Section 4.02 Maintenance and Utilities</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Section 4.03 Changes to the Facilities</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Section 4.04 Installation of District’s Equipment</td>
<td>11</td>
</tr>
<tr>
<td>V</td>
<td>Insurance</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Section 5.01 Fire and Extended Coverage Insurance</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Section 5.02 Liability Insurance</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Section 5.03 Rental Interruption or Use and Occupancy Insurance</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Section 5.04 Worker’s Compensation</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Section 5.05 Insurance Proceeds; Form of Policies</td>
<td>14</td>
</tr>
<tr>
<td>VI</td>
<td>Defaults and Remedies</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Section 6.01 Defaults and Remedies</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Section 6.02 Waiver</td>
<td>18</td>
</tr>
<tr>
<td>VII</td>
<td>Eminent Domain; Prepayment</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Section 7.01 Eminent Domain</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Section 7.02 Prepayment</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Section 7.03 Option to Purchase; Sale of Personal Property</td>
<td>20</td>
</tr>
<tr>
<td>VIII</td>
<td>Covenants</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Section 8.01 Right of Entry</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Section 8.02 Liens</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Section 8.03 Quiet Enjoyment</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Section 8.04 County Not Liable</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Section 8.05 Assignment and Subleasing</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Section 8.06 Title to Facilities</td>
<td>21</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

(Continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.07</td>
<td>Tax Covenants</td>
<td>22</td>
</tr>
<tr>
<td>8.08</td>
<td>Continuing Disclosure</td>
<td>22</td>
</tr>
<tr>
<td>8.09</td>
<td>Taxes</td>
<td>23</td>
</tr>
<tr>
<td>8.10</td>
<td>Purpose of Lease</td>
<td>23</td>
</tr>
<tr>
<td>9.01</td>
<td>Disclaimer of Warranties</td>
<td>23</td>
</tr>
<tr>
<td>9.02</td>
<td>Vendor’s Warranties</td>
<td>24</td>
</tr>
<tr>
<td>9.03</td>
<td>Use of the Facilities</td>
<td>24</td>
</tr>
<tr>
<td>10.01</td>
<td>Law Governing</td>
<td>25</td>
</tr>
<tr>
<td>10.02</td>
<td>Notices</td>
<td>25</td>
</tr>
<tr>
<td>10.03</td>
<td>Validity and Severability</td>
<td>25</td>
</tr>
<tr>
<td>10.04</td>
<td>Net-Net-Net Lease</td>
<td>26</td>
</tr>
<tr>
<td>10.05</td>
<td>Section Headings</td>
<td>26</td>
</tr>
<tr>
<td>10.06</td>
<td>Amendment or Termination</td>
<td>26</td>
</tr>
<tr>
<td>10.07</td>
<td>Execution</td>
<td>26</td>
</tr>
<tr>
<td>A-1</td>
<td>EXHIBIT A  THE FACILITIES</td>
<td></td>
</tr>
<tr>
<td>B-1</td>
<td>EXHIBIT B  DISTRICT RENTAL PAYMENT SCHEDULE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EXHIBIT C  LEASE TERM</td>
<td></td>
</tr>
</tbody>
</table>
SYBLEASE

This Sublease, dated as of June 1, 2020, by and between the COUNTY OF SANTA CLARA (the “County”), a body corporate and politic and a political subdivision of the State of California, as lessor, and the SANTA CLARA COUNTY CENTRAL FIRE PROTECTION DISTRICT (the “District”), a public body, corporate and politic, duly organized and existing under the laws of the State of California, as lessee;

W I T N E S S E T H :

WHEREAS, the County has determined that it is in its best interests to finance various capital projects for the District (the additional facilities, including the site thereof, are described herein as the “Fire District Project”);

WHEREAS, the Santa Clara County Financing Authority (the “Authority”) has agreed to issue $__________ aggregate principal amount of its Lease Revenue Bonds (Fire District Facilities), 2020 Series A (the “2020A Bonds”), pursuant to a Trust Agreement, dated as of June 1, 2020 (the “Trust Agreement”) by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), for the purpose of financing the acquisition, improvement, furnishing and equipping of the Fire District Project;

WHEREAS, the District will execute a District Site Lease, dated as of June 1, 2020 (the “District Site Lease”), by and between the District, as lessor, and the County, as lessee, pursuant to which the District will lease certain capital assets (the “Facilities”) and the sites thereof to the County, and the County will use proceeds of the 2020A Bonds to pay to the District the rental due under the District Site Lease for the Facilities;

WHEREAS, the County executed a Site Lease, dated as of June 1, 2020 (the “Site Lease”), between the County and the Authority, pursuant to which the Facilities and the sites thereof, among other properties, are leased to the Authority;

WHEREAS, the Authority leased back the Facilities to the County pursuant to the Facilities Lease, dated as of June 1, 2020 (the “Facilities Lease”), between the Authority, as sublessor, and the County, as sublessee, under which the County is obligated to make base rental payments to the Authority for the lease of the Facilities and other facilities; and

WHEREAS, pursuant hereto, the County will lease the Facilities back to the District and the District will be obligated to make base rental payments sufficient to pay the principal of and interest on the portion of the 2020A Bonds used to finance the Fire District Project;

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

4162-9541-7122.3
ARTICLE I
DEFINITIONS

SECTION 1.01 Definitions.

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement or Facilities Lease.

2020A Bonds

“2020A Bonds” means the 2020A Bonds designated “2020 Series A” issued by the Authority under and pursuant to Section 2.01 of the Trust Agreement.

Architects

“Architects” means the architects, engineers or designers of the Fire District Project, or any portion thereof, and any successor or successors to any thereof.

Additional Payments

“Additional Payments” means all amounts payable to the County, the Authority or the Trustee or any other person from the District as Additional Payments pursuant to Section 3.02 hereof.

Authority

“Authority” means Santa Clara County Financing Authority, a joint powers agency between the County and the District, and any surviving, resulting or transferee entity.

Contractors

“Contractors” means the construction contractor for any portion of the Fire District Projects and any successor or successors to any thereof.

County

“County” means the County of Santa Clara, California, a County organized and validly existing under the Constitution and general laws of the State.

District

“District” means the Santa Clara County Central Fire Protection District, a body corporate and politic and a political subdivision of the State of California, acting as lessee hereunder and any surviving, resulting or transferee entity.
District Base Rental Payment Schedule

“District Base Rental Payment Schedule” means the schedule of District Base Rental Payments payable to the County from the District pursuant to Section 3.01 hereof and attached hereto as Exhibit B, as the same may be amended from time to time.

District Base Rental Payments

“District Base Rental Payments” means all amounts payable to the County from the District as District Base Rental Payments pursuant to Section 3.01 hereof.

District Project

“District Project” means the financing of additional facilities for the District consisting of the acquisition, construction and equipping of a fire station in Campbell, California.

District Site Lease

“District Site Lease” means the lease, dated as of June 1, 2020, by and between the District, as lessor, and the County, as lessee, as originally executed and recorded as it may from time to time be supplemented, modified or amended pursuant to the provisions thereof.

Event of Default

“Event of Default” shall have the meaning specified in Section 6.01 hereof.

Facilities

“Facilities” shall mean the real property and the improvements thereon, as described in Exhibit A hereto, or any District or County buildings, other improvements and facilities, added thereto or substituted therefor, or any portion thereof, in accordance with the Facilities Lease and the Trust Agreement.

Fire District Project

“Fire District Project” means the acquisition of property consisting of 2.60 acres of land and 47,189 square foot office building located at 1315 Dell Avenue in the City of Campbell, and equipping and improving such projects of the District, and payment of any costs associated with financing of said projects, as set forth in the Facilities Lease, as the same may be changed from time to time, in accordance with Section 3.07 hereof, by a Certificate of the County delivered to the Trustee.

Rental Payment Period

“Rental Payment Period” means the twelve-month period commencing _________ of each year and ending the following __________, and the initial period commencing on the effective date hereof and ending the following __________.
State

“State” means the State of California.

Sublease

“Sublease” means this Sublease, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof.

Substitute Property

“Substitute Property” shall have the meaning specified in Section 2.03 hereof.

Trust Agreement

“Trust Agreement” means the trust agreement, dated as of June 1, 2020, between the Trustee and the Authority and acknowledged by the County, pursuant to which the Trustee will execute and deliver the 2020A Bonds, as originally executed or as it may from time to time be supplemented, modified or amended by a supplemental Trust Agreement entered into pursuant to the provisions of the Trust Agreement.

Trustee

“Trustee” means U.S. Bank National Association, appointed as trustee pursuant to the Trust Agreement, and any successor appointed under the Trust Agreement.

2020A Bonds

“2020 A Bonds” means the Bonds designated “Santa Clara County Financing Authority Lease Revenue Bonds (Fire District Facilities), 2020 Series A” issued by the Authority under and pursuant to Section 2.01 of the Trust Agreement.

ARTICLE II
LEASE OF FACILITIES; TERM

SECTION 2.01 Lease of Facilities. The County hereby leases to the District and the District hereby leases from the County the Facilities, subject, however, to all easements, encumbrances, and restrictions that exist at the time of the commencement of the term of this Sublease, as defined in Section 2.02 hereof. The District hereby agrees and covenants during the term of this Sublease that, except as hereinafter provided, it will use the Facilities for public and County purposes so as to afford the public the benefits contemplated by this Sublease.

SECTION 2.02 Term; Occupancy. The term of this Sublease shall commence on the date of recordation of this Sublease in the office of the County Recorder of Santa Clara County, State of California, or on __________, 2020, whichever is earlier, and shall end on the respective dates specified in Exhibit C hereto for the respective Facilities, unless such term is extended or sooner terminated as hereinafter provided. If on the termination date, the District Base
Rental Payments and all other amount then due hereunder with respect to the Facilities related thereto, shall not be fully paid, or if the rental payable hereunder shall have been abated at any time and for any reason, then the term of this Sublease with respect to such Facilities shall be extended until the District Base Rental Payments attributable to the respective Facilities and all other amounts then due hereunder with respect to such Facilities, shall be fully paid, except that the term of this Sublease with respect to the related Facilities shall in no event be extended beyond the maximum extension date for such Facilities identified in Exhibit C hereto. If prior to such date, the District Base Rental Payments or all the 2020A Bonds payable therefrom and all other amounts then due hereunder, shall be fully paid, or provision therefor made, the term of this Sublease shall end ten (10) days thereafter or upon written notice by the District to the County, whichever is earlier.

SECTION 2.03 Substitution and Release. The District and the County may substitute real property as part of the Facilities for purposes of this Sublease (the “Substitute Property), but only after the District shall have filed with the County all of the following:

(a) Executed copies of this Sublease or amendments thereto containing the amended description of the Facilities, to reflect the Substitute Property.

(b) A Certificate of the District with copies of this Sublease or the District Site Lease, if needed, or amendments thereto containing the amended description of the Facilities to reflect the Substitute Property stating that such documents have been duly recorded in the official records of the County Recorder of the County.

(c) A Certificate of the District, evidencing that the annual fair rental value of the substitute Facilities will be at least equal to 100% of the maximum amount of District Base Rental Payments becoming due in the then current year ending __________ or in any subsequent year ending __________.

(d) A Certificate of the District stating that, based upon review of such instruments, certificates or any other matters described in such Certificate of the District, the District has good merchantable title to the Facilities which will constitute the Facilities after such substitution. The term “Good Merchantable Title” shall mean such title as is satisfactory and sufficient for the needs and operations of the District.

(e) A Certificate of the District stating that such substitution does not adversely affect the District’s use and occupancy of the Facilities.

(f) An Opinion of Counsel (as such term is defined in the Trust Agreement) stating that such amendment or modification (i) is permitted by and complies with the Constitution, law of the State, and the terms of the Trust Agreement and this Sublease; (ii) will, upon the execution and delivery thereof, be valid and binding upon the County and the District in accordance with its terms; and (iv) will not cause the interest on the 2020A Bonds to be included in gross income for federal income tax purposes.
ARTICLE III

RENTAL PAYMENTS; USE OF PROCEEDS

SECTION 3.01 District Base Rental Payments. The District agrees to pay to the County, as District Base Rental Payments for the use and occupancy of the Facilities (subject to the provisions of Sections 3.04, 3.06 and 7.01 of this Sublease) annual rental payments comprised of the principal components, and semi-annual interest components in accordance with the District Base Rental Payment Schedule attached hereto as Exhibit B and made a part hereof. District Base Rental Payments shall be calculated on an annual basis, for each Rental Payment Period, and each annual District Base Rental shall be divided into two interest components, due on May 1 and November 1, and one principal component, due on May 1, except that the first District Base Rental Payment Period commences on the date of recordation of this Sublease and ends on April 30, 2021 and shall have only an interest component payable on November 1, 2020. Each District Base Rental Payment installment shall be payable two (2) Business Days before its due date. The interest components of the District Base Rental Payments shall be paid by the District as and constitute interest paid on the principal components of the District Base Rental Payments to be paid by the District hereunder, computed on the basis of a 360-day year composed of twelve 30-day months. Each annual payment of District Base Rental (to be payable in installments as aforesaid) shall be for the use of the Facilities.

If of the term this Sublease shall have been extended pursuant to Section 2.02 hereof, District Base Rental Payment installments shall continue to be due on May 1 and November 1 in each year, and payable prior thereto as hereinabove described, continuing to and including the date of termination of this Sublease. Upon such extension of this Sublease, the District shall deliver to the Trustee a Certificate setting forth the extended rental payment schedule, which schedule shall establish the principal and interest components of the District Base Rental Payments so that the principal components will in the aggregate be sufficient to pay all unpaid principal components with interest components sufficient to pay all unpaid interest components plus interest.

If at any time the Base Rental shall not have been paid by the District when due, for any reason whatsoever, and no other source of funds shall have been available to make the payments of principal and interest on the 2020A Bonds, the principal and interest components of the Base Rental shall be recalculated by the District to reflect interest on the unpaid District Base Rental Payments as provided in Section 3.04. Upon request by the [Authority, the County or the Trustee], a revised Exhibit B to this Sublease shall be prepared by the District and supplied to the [Authority, the County and the Trustee] reflecting such recalculation.

SECTION 3.02 Additional Payments. The District shall also pay such amounts (herein called the “Additional Payments”) as shall be required by the County for the payment of all costs and expenses incurred by the County in connection with the execution, performance or enforcement of this Sublease or any pledge of Base Rental payable hereunder, the Trust Agreement, its interest in the Facilities and the lease of the Facilities to the District, including but not limited to payment of all fees, costs and expenses and all administrative costs of the County related to the Facilities, including, without limiting the generality of the foregoing, salaries and wages of employees, all expenses, compensation and indemnification of the Trustee payable by the County under the Trust Agreement, fees of auditors, accountants, attorneys or architects, and
all other necessary 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 2020A Bonds or of the Trust Agreement; but not including in Additional Payments amounts required to pay the principal of or interest on the 2020A Bonds.

Such Additional Payments shall be billed to the District by the County or the Trustee from time to time, together with a statement certifying that the amount billed has been paid by the County or by the Trustee on behalf of the County or Authority, for one or more of the items above described, or that such amount is then payable by the County or the Trustee for such items. Amounts so billed shall be paid by the District to the billing party within 30 days after receipt of the bill by the District. The District reserves the right to audit billings for Additional Payments although exercise of such right shall in no way affect the duty of the District to make full and timely payment for all Additional Payments.

The Authority has issued and may in the future issue bonds and has entered into and may in the future enter into leases to finance capital improvements other than the Fire District Projects. The administrative costs of the Authority shall be allocated among the facilities subject to such other lease agreements and the Facilities, as hereinafter in this paragraph provided. The fees of the Trustee under the Trust Agreement, and any other expenses directly attributable to the Facilities shall be included in the Additional Payments payable hereunder. The fees of any trustee or paying agent under any indenture securing bonds of the Authority or any trust agreement other than the Trust Agreement, and any other expenses directly attributable to any facilities other than the Facilities, shall not be included in the administrative costs of the Facilities and shall not be paid from the Additional Payments payable hereunder. Any expenses of the Authority not directly attributable to any particular lease of the County shall be equitably allocated among all such leases, including the this Sublease, in accordance with sound accounting practice. In the event of any question or dispute as to such allocation, the written opinion of an independent firm of certified public accountants, employed by the Authority to consider the question and render an opinion thereon, shall be a final and conclusive determination as to such allocation. The Trustee may conclusively rely upon the Written Request of the Authority, with the approval of the Director of Finance of the County, or a designee thereof, or a duly authorized representative of the District, endorsed thereon, in making any determination that costs are payable as Additional Payments hereunder, and shall not be required to make any investigation as to whether or not the items so requested to be paid are expenses related to the lease of the Facilities.

SECTION 3.03 Fair Rental Value. Such payments of District Base Rental Payments and Additional Payments for each rental period during the term of this Sublease shall constitute the total rental for said District Rental Payment Period and shall be paid by the District in each District Rental Payment Period for and in consideration of the right of use and occupancy of, and continued quiet use and enjoyment of, the Facilities during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental payable for each District Rental Payment Period represents the fair rental value of the Facilities for each such period. In making such determination, consideration has been given to the value of the Facilities, costs of acquisition, design, construction and financing of the Facilities, other obligations of the parties under this Sublease, the uses and purposes which may be served by the Facilities and the benefits therefrom which will accrue to the District and the general public.
SECTION 3.04 Payment Provisions. Each installment of rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Trustee at its Principal Office, or such other place as the County shall designate. Any such installment of rental accruing hereunder which shall not be paid when due and payable under the terms of this Sublease shall bear interest at the rate of __________ percent (_, %) per annum, or such lesser rate of interest as may be required by law, from the date when the same is due hereunder until the same shall be paid. Notwithstanding any dispute between the County and the District, the District 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 District 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. Amounts required to be deposited by the District with the Trustee pursuant to this Section on any date shall be reduced to the extent that amounts on deposit in the Revenue Fund, the Interest Account or the Principal Account are available therefor.

All payments received shall be applied first to the interest components of the District Base Rental Payments due hereunder, then to the principal components of the District Base Rental Payments due hereunder and thereafter to all Additional Payments due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

Rental is subject to abatement as provided in Section 3.06.

Nothing contained in this Sublease shall prevent the District from making from time to time contributions or advances to the County for any purpose now or hereafter authorized by law, including the making of repairs to, or the restoration of, the Facilities in the event of damage to or the destruction of the Facilities.

SECTION 3.05 Appropriations Covenant. The District covenants to take such action as may be necessary to include all such District Base Rental Payments and Additional Payments due hereunder in its annual budgets, to make necessary annual appropriations for all such District Base Rental Payments and Additional Payments as shall be required to provide funds in such year for such District Base Rental Payments and Additional Payments. Copies of the portion of the budget as adopted which appropriates all moneys necessary for the payment of District Base Rental Payments and Additional Payments hereunder shall be available to the Authority, the County and the Trustee no more than sixty (60) days after adoption. The covenants on the part of the District herein contained 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 District 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 District to carry out and perform the covenants and agreements in this Sublease agreed to be carried out and performed by the District.

The County and the District understand and intend that the obligation of the District to pay District Base Rental Payments and Additional Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning
the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. District Base Rental Payments and Additional Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise legally available for the purpose of paying District Base Rental Payments and Additional Payments or other payments due hereunder as consideration for use of the Facilities. This Sublease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the District Base Rental Payments and Additional Payments or any other payments due hereunder.

SECTION 3.06 Rental Abatement. The District Base Rental Payments and Additional Payments shall be abated proportionately, during any period in which by reason of any damage or destruction (other than by condemnation which is hereinafter provided for) there is substantial interference with the use and occupancy of the Facilities by the District, in the proportion in which the cost of that portion of the Facilities rendered unusable bears to the cost of the whole of the Facilities. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Sublease shall continue in full force and effect and shall be extended pursuant to Section 2.02 hereof; and the District waives any right to terminate this Sublease by virtue of any such damage or destruction. Notwithstanding the foregoing, to the extent that moneys are available for the payment of District Base Rental Payments in any of the funds and accounts established under the Trust Agreement (except the Reserve Fund), District Base Rental Payments shall not be abated as provided above but, rather, shall be payable by the County as a special obligation payable solely from said funds and accounts.

SECTION 3.07 Use of Proceeds. The parties hereto agree that the proceeds of the 2020A Bonds will be used to finance the Fire District Project and to pay the costs of issuing the 2020A Bonds and incidental and related expenses. Any proceeds of the 2020A Bonds not needed for the Fire District Project may be used by the District for other capital expenditures as permitted by law.

The District hereby agrees to reimburse itself for the acquisition costs and related expenses of the Fire District Project from the proceeds of the 2020A Bonds provided to the District by the Authority [and the County] in consideration for the leasehold interest in the real property comprising the Facilities.

The Authority [and the County] agrees to cooperate fully with the District with respect to improvements to the Fire District Project pursuant to such plans or specifications as the District may provide from time to time. The District plans to use its own funds to finance certain improvements to the buildings that comprise the Fire District Project. The construction of such improvements will not interfere with the District’s use and occupancy of the Facilities nor will failure of the District to complete the improvements to the Fire District Project cause an abatement of Base Rental hereunder.
ARTICLE IV

MAINTENANCE; ALTERATIONS AND ADDITIONS

SECTION 4.01  [Construction of District Project.  The Authority pursuant to the Facilities Lease has agreed to construct or cause to be constructed the Fire District Project consisting of a fire station and to appoint the District, as its agent to construct the Project. The District and the County agree that the Fire District Project will be constructed in accordance with the plans and specifications prepared by the architects for the Fire District Project and approved by the District. The District and the County further agree that the District will seek competitive bids for the construction of the Fire District Project and contract for the construction thereof with the winning bidder or bidders providing for substantial completion of the Fire District Project on or before __________, 20__ at a cost not to exceed $__________.

The District agrees that upon substantial completion of the Fire District Project it will take possession of and occupy throughout of this Lease such Project under the terms and provisions of this Sublease. Such substantial completion shall be evidenced either by a certificate of the Architects or by the occupancy by the District of such Project. The time within which the contractors are required to complete the Fire District Project shall be extended for a period equal to any extensions of time to which the contractors are entitled under the construction contract and any delays in construction resulting from other causes and events not within the reasonable control of the contractors or of the Authority.

The District may alter the Project or issue change orders altering the construction contract plans and specifications during the course of construction, if such changes do not materially reduce or diminish the value, capacity, adaptability or usefulness of the Project, and the County agrees to cooperate fully with the Authority and the District to cause such alterations or change orders to be implemented. Before the Authority shall issue any such alterations or change orders which, together with all other changes, would increase the aggregate cost of construction of the Project above the moneys available or to be available for such purpose in the Fire District Project Fund, or delay completion of the Fire District Project beyond __________, 20__, the District shall arrange with the County and the Authority to pay the increased cost resulting from such changes, or to pay the Base Rental Payments to become due and payable after __________, 20__ and allocable to the Fire District Project, until such time as such Project shall be scheduled to be completed, and shall deposit funds sufficient to pay such increased cost or such Base Rental Payments, as the case may be, with the Director of Finance.]

SECTION 4.02  Maintenance and Utilities. During such time as the District is in possession of the Facilities, all maintenance and repair, both ordinary and extraordinary, of the Facilities shall be the responsibility of the District, which shall at all times maintain or otherwise arrange for the maintenance of the Facilities in good condition, and the District shall pay for or otherwise arrange for the payment of all utility services supplied to the Facilities, 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 Facilities resulting from ordinary wear and tear or want of care on the part of the District or any assignee or sublessee thereof or any other cause and shall pay for or otherwise arrange for the payment of all insurance
policies required to be maintained with respect to the Facilities. In exchange for the rental herein provided, the County agrees to provide only the Facilities. The District waives the benefits of subsections 1 and 2 of Section 1932 and Section 1933(4) of the California Civil Code, but such waiver does not limit any of the rights of the District under the terms of this Sublease.

In the event the District shall fail to keep the Facilities in good repair and working order or shall fail to maintain any insurance required hereunder, the Authority may, but shall be under no obligation to, maintain and repair the Facilities or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by the Authority shall constitute Additional Payments hereunder, and the District covenants and agrees to pay such amounts so advanced by the Authority with interest thereon from the date advanced until paid as provided in Section 3.04.

SECTION 4.03 Changes to the Facilities. Subject to Section 8.02 hereof, the District shall, at its own expense, have the right to remodel the Facilities or to make additions, modifications and improvements to the Facilities. All such additions, modifications and improvements shall thereafter comprise part of the Facilities and be subject to the provisions of this Sublease. Such additions, modifications and improvements shall not in any way damage the Facilities or cause them to be used for purposes other than those authorized under the provisions of state and federal law; and the Facilities, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Facilities immediately prior to the making of such additions, modifications and improvements.

SECTION 4.04 Installation of District’s Equipment. The District 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 other items of equipment or other personal property in or upon the Facilities. All such items shall remain the sole property of such party, in which neither the County nor the Trustee shall have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Facilities resulting from the installation, modification or removal of any such items. Nothing in this Sublease shall prevent the District 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 Facilities.

ARTICLE V

INSURANCE

SECTION 5.01 Fire and Extended Coverage Insurance. The District shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, insurance through the California State Association of Counties (“CSAC”) or otherwise from a reputable carrier against loss or damage to any structures constituting any part of the Facilities by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance and sprinkler system leakage insurance and earthquake insurance, if available on the open market from reputable insurance companies at a reasonable cost, as determined by the
District. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the greater of (a) the replacement cost (without deduction for depreciation) of all structures constituting any part of the Facilities, excluding the cost of excavations, of grading and filling, and of the land or (b) the aggregate principal amount of the District Base Rental Payments outstanding (except that such insurance may be subject to deductible clauses for any one loss of not to exceed $250,000 or comparable amount adjusted for inflation or more in the case of earthquake insurance), or, in the alternative, shall be in an amount and in a form sufficient (together with moneys held under the Trust Agreement), in the event of total or partial loss, to enable the District to prepay all or any part of the District Base Rental Payments then unpaid, pursuant to Section 7.02 hereof and to redeem outstanding 2020A Bonds.

In the event of any damage to or destruction of any part of the Facilities, caused by the perils covered by such insurance, the County, except as hereinafter provided, shall cause the proceeds of such insurance to be utilized for the repair, reconstruction or replacement of the damaged or destroyed portion of the Facilities, and (pursuant to Section 5.04 of the Trust Agreement) the Director of Finance of the County shall hold said proceeds separate and apart from all other funds, in a special fund to be designated the “Insurance and Condemnation Fund,” to the end that such proceeds shall be applied to the repair, reconstruction or replacement of the Facilities to at least the same good order, repair and condition as they were in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds. The Director of Finance shall permit withdrawals of said proceeds from time to time as provided in the Trust Agreement. Alternatively, the [County] [Authority], with the written consent of the District, and if the proceeds of such insurance together with any other moneys then available for the purpose (including allocable portions of the Reserve Fund) are sufficient to redeem an aggregate principal amount of outstanding Bonds, equal to the amount of District Base Rental attributable to the portion of the Facilities so destroyed or damaged (determined by reference to the proportion which the cost of such portion of the Facilities bears to the cost of the Facilities), may elect not to repair, reconstruct or replace the damaged or destroyed portion of the Facilities and thereupon shall cause said proceeds to be used for the redemption of outstanding Bonds pursuant to the provisions of the Trust Agreement.

The County and the District shall promptly apply for Federal disaster aid or State of California disaster aid in the event that the Facilities are damaged or destroyed as a result of an earthquake occurring at any time. Any proceeds received as a result of such disaster aid shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Facilities, or, at the option of the District and the County, to enable the District to prepay all or any part of the District Base Rental Payments then unpaid, pursuant to Section 7.02 hereof, and to redeem outstanding Bonds if such use of such disaster aid is permitted.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the District may provide a self-insurance or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State of California other than the District. So long as such method or plan is being provided to satisfy
the requirements of this Sublease, there shall be filed annually with the Trustee a statement of an
actuary, insurance consultant or other qualified person (which may be the Risk Manager of the
County), stating that, in the opinion of the signer, the substitute method or plan of protection is in
accordance with the requirements of this Section and, when effective, would afford reasonable
coverage for the risks required to be insured against. There shall also be filed a Certificate of the
District or the County setting forth the details of such substitute method or plan. In the event of
loss covered by any such self-insurance method, the liability of the District hereunder shall be
limited to the amounts in the self-insurance reserve fund or funds created under such method.

SECTION 5.02 Liability Insurance. Except as hereinafter provided, the District
shall procure or cause to be procured and maintain or cause to be maintained, throughout the term
of this Sublease, a standard comprehensive general liability insurance policy or policies in
protection of the County and its members, directors, officers, agents and employees, and the
Trustee, insuring said parties against all direct or contingent loss or liability for damages for
personal injury, death or property damage occasioned by reason of the operation of the Facilities,
with minimum liability limits of $1,000,000 per occurrence and $3,000,000 in aggregate and
$5,000,000 excess liability, such policy to be obtained through CSAC or otherwise from a
reputable carrier. Such liability insurance may be maintained as part of or in conjunction with any
other liability insurance carried by the District or the County.

As an alternative to providing the insurance required by the first paragraph of this
Section, or any portion thereof, the District may provide self-insurance or plan of protection or
participate in a joint powers authority or other program providing pooled insurance to the extent
such self-insurance method or plan of protection shall afford reasonable protection to the County,
its members, directors, officers, agents and employees and the Trustee, in light of all
circumstances, giving consideration to cost, availability and similar plans or methods of protection
adopted by public entities in the State of California other than the District. So long as such method
or plan is being provided to satisfy the requirements of this Sublease, there shall be filed annually
with the Trustee a statement of an actuary, independent insurance consultant or other qualified
person (which may be the Risk Manager of the County), stating that, in the opinion of the signer,
the substitute method or plan of protection is in accordance with the requirements of this Section
and, when effective, would afford reasonable protection to the County, its members, directors,
officers, agents and employees and the Trustee against loss and damage from the hazards and risks
covered thereby. There shall also be filed a Certificate of the District setting forth the details of
such substitute method or plan.

SECTION 5.03 Rental Interruption or Use and Occupancy Insurance. The
District shall procure or cause to be procured and maintain or cause to be maintained, rental
interruption or use and occupancy insurance to cover loss, total or partial, of the rental income
from or the use of the Facilities as the result of any of the hazards covered by the insurance required
by Section 5.01 hereof (provided with respect to earthquake insurance, only if available on the
open market from reputable insurance companies at a reasonable cost, as determined by the
County), in an amount at least equal to the maximum Base Rental Payments coming due and
payable during any two consecutive Fiscal Years during the remaining term of this Facilities Lease,
such policy to be obtained through CSAC or otherwise from a reputable carrier. Any proceeds of
such insurance shall be used by the Trustee to reimburse to the District any rental theretofore paid
by the District under this Sublease attributable to such structure for a period of time during which
the payment of rental under this Sublease is abated, and any proceeds of such insurance not so used shall be applied as provided in Section 3.01 (to the extent required for the payment of District Base Rental) and in Section 3.02 (to the extent required for the payment of Additional Payments) and any remainder shall be treated as Revenue under the Trust Agreement. The District shall not be entitled to self-insure for rental interruption insurance.

SECTION 5.04 Worker’s Compensation. The District shall also maintain worker’s compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure its employees against liability for compensation under the California Labor Code, as applicable to Counties, or any act hereafter enacted as an amendment or supplement thereto. As an alternative, such insurance may be maintained as part of or in conjunction with any other insurance carried by the District. Such insurance may be maintained by the District in the form of self-insurance.

SECTION 5.01 Title Insurance. The District shall obtain, for the benefit of the Authority and the Trustee, upon the execution and delivery of this Sublease, title insurance on the Facilities, in an amount equal to the aggregate principal amount of the 2020A Bonds, issued by a company of recognized standing duly authorized to issue the same, subject only to Permitted Encumbrances.

SECTION 5.03 Insurance Proceeds; Form of Policies. All policies of insurance from third-party carriers required by Section 5.02 shall name the District, the County, the Authority and the Trustee, and all policies of insurance required by Section 5.05 shall name the Authority, the County and the Trustee, as insured. All policies of insurance from third-party carriers required by Section 5.01 shall contain a lender’s loss payable endorsement in favor of the Trustee substantially in accordance with the form approved by the Insurance Services Office and the California Bankers Association. The Trustee shall, to the extent practicable, receive all moneys which may become due and payable under the policies obtained pursuant to Section 5.01, 5.03 and 5.05 and shall apply the proceeds of such insurance as provided in Sections 5.01 and 5.03. All policies of insurance required by this Sublease shall provide that the Trustee shall be given thirty (30) days’ notice of each expiration thereof or any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency of any insurance herein required and 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 District. The District shall pay when due the premiums for all insurance policies required by this Sublease.

SECTION 5.04 Annual Certificates. The District will deliver to the County and the Trustee no later than [August] in each year a written Certificate of an officer of the District stating whether such policies satisfy the requirements of this Sublease, setting forth the insurance policies then in force pursuant to this Section, the names of the insurers which have issued the policies, the amounts thereof and the property and risks covered thereby, and, if any self-insurance program is being provided, the annual report of an actuary, independent insurance consultant or other qualified person containing the information required for such self-insurance program and described in Sections 5.01, 5.02 and 5.04. Delivery to the Trustee of the certificate under the provisions of this Section shall not confer responsibility upon the Trustee as to the sufficiency of coverage or amounts of such policies. If so requested in writing by the Trustee, the District shall
also deliver to the Trustee certificates or duplicate originals or certified copies of each insurance policy described in such schedule.

**ARTICLE VI**

**DEFAULTS AND REMEDIES**

SECTION 6.01  Defaults and Remedies. (a) If (i) the District shall fail to pay any rental payable hereunder when the same becomes due, time being expressly declared to be of the essence of this Sublease, or (ii) the District shall fail to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the District (other than as referred to in (i) for a period of sixty (60) days after notice of the same has been given to the District by the County, the Authority or the Trustee (or if the District notifies the County, the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60 day period, the failure will not constitute an Event of Default if the District commences to cure the failure within such 60 day period and thereafter diligently and in good faith cures such failure in a reasonable period of time), or upon the happening of any of the events specified in subsection (b) of this Section (any such case above being an “Event of Default”), the District shall be deemed to be in default hereunder and it shall be lawful for the County, the Authority and the Trustee (subject to its rights and protections under the Trust Agreement) to exercise any and all remedies available pursuant to law or granted pursuant to this Sublease. Upon any such default, the County, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1)  To terminate this Sublease in the manner hereinafter provided on account of default by the District, notwithstanding any re-entry or re-letting of the Facilities as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Facilities and remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and place such personal property in storage in any warehouse or other suitable place located within the County of Santa Clara, California. In the event of such termination, the District agrees to surrender immediately possession of the Facilities, without let or hindrance, and to pay the County all damages recoverable at law that the County may incur by reason of default by the District, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Facilities and removal and storage of such property by the County or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Facilities given pursuant to law nor any entry or re-entry by the County nor any proceeding in unlawful detainer, or otherwise, brought by the County for the purpose of effecting such re-entry or obtaining possession of the Facilities nor the appointment of a receiver upon initiative of the County to protect the County’s interest under this Sublease shall of itself operate to terminate this Sublease, and no termination of this Sublease on account of default by the District shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the County shall have given written notice to the District of the election on the part of the County to terminate this Sublease. The District covenants and agrees that no surrender of the Facilities or of the remainder of hereof or any termination of this Sublease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the County by such written notice.
Without terminating this Sublease, (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 District, regardless of whether or not the District has abandoned the Facilities, or (ii) to exercise any and all rights of entry and re-entry upon the Facilities. In the event the County does not elect to terminate this Sublease in the manner provided for in subparagraph (1) hereof, the District shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the District and, if the Facilities are not re-let, to pay the full amount of the rent to the end of of this Sublease or, in the event that the Facilities 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 County 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 County or suit in unlawful detainer, or otherwise, brought by the County for the purpose of effecting such entry or re-entry or obtaining possession of the Facilities. Should the County elect to enter or re-enter as herein provided, the District hereby irrevocably appoints the County as the agent and attorney-in-fact of the District to re-let the Facilities, or any part thereof, from time to time, either in the County’s name or otherwise, upon such terms and conditions and for such use and period as the County may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and to place such personal property in storage in any warehouse or other suitable place located in the County of Santa Clara, California, for (to the extent permitted by law) the account of and at the expense of the District, and the District (to the extent permitted by law) hereby exempts and agrees to save harmless the County 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 Facilities and removal and storage of such property by the County or its duly authorized agents in accordance with the provisions herein contained. The District agrees that the terms of this Sublease constitute full and sufficient notice of the right of the County to re-let the Facilities and to do all other acts to maintain or preserve the Facilities as the County deems necessary or desirable in the event of such re-entry without affecting a surrender of this Sublease, and further agrees that no acts of the County in effecting such re-letting shall constitute a surrender or termination of this Sublease irrespective of the use or 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 District the right to terminate this Sublease shall vest in the County to be effected in the sole and exclusive manner provided for in sub-paragraph (1) hereof. The District further waives the right to any rental obtained by the County in excess of the rental herein specified and hereby conveys and releases such excess to the County as compensation to the County for its services in re-letting the Facilities or any part thereof. The District further agrees to the extent permitted by law to pay the County the reasonable cost of any alterations or additions to the Facilities necessary to place the Facilities in condition for re-letting immediately upon notice to the District of the completion and installation of such additions or alterations.

The District hereby waives any and all claims for damages caused or which may be caused by the County in re-entering and taking possession of the Facilities as herein provided and all claims for damages that may result from the destruction of or injury to the Facilities and all claims for damages to or loss of any property belonging to the District, or any other person, that may be in or upon the Facilities.
(b) If (1) the District’s interest in this Sublease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the County, as hereinafter provided for, or (2) the District or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the District asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the District’s debts or obligations, or offers to the District’s creditors to effect a composition or extension of time to pay the District’s debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the District’s debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the District, or if a receiver of the business or of the property or assets of the District shall be appointed by any court, except a receiver appointed at the instance or request of the County, or if the District shall make a general or any assignment for the benefit of the District’s creditors, or if (3) the District shall abandon or vacate the Facilities, then the District shall be deemed to be in default hereunder.

(c) The County shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the County shall have failed to perform such obligations within sixty (60) days or such additional time as is reasonably required to correct any such default after notice by the District to the County properly specifying wherein the County has failed to perform any such obligation. In the event of default by the County, the District shall be entitled to pursue any remedy provided by law.

(d) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default as described in this Section, the County shall be entitled to proceed to protect and enforce the rights vested in the County by this Sublease and under the Site Lease or by law or by equity. The provisions of this Sublease and the duties of the District and of its trustees, officers or employees shall be enforceable by the County by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the County shall have the right to bring the following actions:

1. **Accounting.** By action or suit in equity to require the District and its trustees, officers and employees and its assigns to account as the trustee of an express trust.

2. **Injunction.** By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the County.

3. **Mandamus.** By mandamus or other suit, action or proceeding at law or in equity to enforce the County’s rights against the District (and its board, officers and employees) and to compel the District to perform and carry out its duties and obligations under the law and its covenants and agreements with the District as provided herein.

The exercise of any rights or remedies under this Sublease shall not permit acceleration of District Base Rental Payments.
Each and all of the remedies given to the County hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the County to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. “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 County of the Facilities. If any statute or rule of law validly shall limit the remedies given to the County hereunder, the County nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the County shall prevail in any action brought to enforce any of the terms and provisions of this Sublease, the District agrees to pay a reasonable amount as and for attorney’s fees incurred by the County in attempting to enforce any of the remedies available to the County hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

SECTION 6.02 Waiver. Failure of the County to take advantage of any default on the part of the District shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the County to insist upon performance by the District of any term, covenant or condition hereof, or to exercise any rights given the County on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Sublease.

ARTICLE VII

EMINENT DOMAIN; PREPAYMENT

SECTION 7.01 Eminent Domain. If the whole of the Facilities or so much thereof as to render the remainder unusable for the purposes for which it was used by the District shall be taken under the power of eminent domain, of this Sublease shall cease as of the day that possession shall be so taken. If less than the whole of the Facilities shall be taken under the power of eminent domain and the remainder is usable for the purposes for which it was used by the District at the time of such taking, then this Sublease 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 due hereunder in an amount equivalent to the amount by which the annual payments of principal and interest on the Outstanding Bonds will be reduced by the application of the award in eminent domain to the redemption of outstanding 2020A Bonds. So long as any of the 2020A Bonds shall be outstanding, any award made in eminent domain proceedings for taking the Facilities or any portion thereof shall be paid to the County (and by the County to the Trustee) and applied to the prepayment of the District Base Rental Payments as provided in Section 7.02. Any such award made after all of the District Base Rental Payments and Additional Payments have been fully paid, or provision therefor made, shall be paid to the to the District.

SECTION 7.02 Prepayment. (a) The District shall prepay on any date from insurance (including proceeds of title insurance) and eminent domain proceeds, to the extent
provided in Sections 5.01 and 7.01 hereof, all or any part of District Base Rental Payments then unpaid so that, to the extent permitted by the amount of insurance and eminent domain proceeds received, the District Base Rental Payments remaining will correspond to the debt service on the remaining Outstanding Bonds (taking into account the reduction in District Base Rental Payments allocable to future interest on the 2020A Bonds that are redeemed), at a prepayment amount equal to the redemption payment of the maximum amount of 2020A Bonds, including the principal thereof and the interest thereon to the date of redemption, plus any applicable premium redeemable from such proceeds (provided, however, that in the event of partial damage to or destruction of the Facilities caused by perils covered by insurance, if in the judgment of the County the insurance proceeds are sufficient to repair, reconstruct or replace the damaged or destroyed portion of the Facilities, such proceeds shall be held by the Trustee and used to repair, reconstruct or replace the damaged or destroyed portion of the Facilities, pursuant to the procedure set forth in Section 5.01 for proceeds of insurance).

(b) If all requirements of Section 10.01 of the Trust Agreement have been satisfied, the District may prepay from any source of available funds, all or any portion of District Base Rental Payments by depositing with the Trustee moneys or securities as provided in Article X of the Trust Agreement sufficient to defease 2020A Bonds corresponding to such District Base Rental Payments when due; provided, if required by the Trust Agreement that the District furnishes the Trustee with an Opinion of Counsel that such deposit will not cause interest on the 2020A Bonds to be includable in gross income for federal income tax purposes. The District agrees that if following such prepayment the Facilities are damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid District Base Rental Payments and shall not be entitled to any reimbursement of such District Base Rental Payments.

(c) Before making any prepayment pursuant to this article, the District shall, within five (5) days following the event creating such right or obligation to prepay, give written notice to the County and the Trustee describing such event and specifying the date on which the prepayment will be made, which date shall be not less than thirty (30) days (unless waive by the Trustee) from the date such notice is given.

(d) When (1) there shall have been deposited with the Trustee at or prior to the due dates of the District Base Rental Payments or date when the District may exercise its option to purchase the Facilities or any portion or item thereof, in trust for the benefit of the Owners of the 2020A Bonds and irrevocably appropriated and set aside to the payment of the District Base Rental Payments or option price, sufficient moneys and Permitted Investments described in subsection (1) of the definition thereof in the Trust Agreement, not redeemable prior to maturity, the principal of and interest on which when due will provide money sufficient to pay all principal, premium, if any, and interest on all or a portion of the 2020A Bonds to the due date of said Bonds or date when the District may exercise its option to purchase the Facilities, as the case may be; (2) all requirements of Section 10.01 of the Trust Agreement have been satisfied; and (3) an agreement shall have been entered into with the Trustee for the payment of its fees and expenses so long as any of the 2020A Bonds shall remain unpaid (if necessary), then and in that event the right, title and interest of the Authority herein and the obligations of the District hereunder shall thereupon cease, terminate, become void and be completely discharged and satisfied with respect to all or a portion of the Facilities (except for the right of the Authority and the County and the obligation of
the District to have such moneys and such Permitted Investments applied to the payment of the District Base Rental Payments or option price) and the County and Authority’s interest in and title to the Facilities or applicable portion or item thereof shall be transferred and conveyed to the District. In such event, the Authority and the County shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the Authority and the District and evidence such discharge and satisfaction, and the Authority and the District shall pay over to the District as an overpayment of District Base Rental Payments all such moneys or Permitted Investments held by it pursuant hereto other than such moneys and such Permitted Investments as are required for the payment or prepayment of the District Base Rental Payments or the option price and the fees and expenses of the Trustee, which moneys and Permitted Investments shall continue to be held by the Trustee in trust for the payment of District Base Rental Payments or the option price and the fees and expenses of the Trustee, and shall be applied by the Authority and the County to the payment of the District Base Rental Payments or the option price and the fees and expenses of the Trustee.

SECTION 7.03  Sale of Personal Property. The District, in its discretion, may request the County to sell or exchange any personal property which may at any time constitute a part of the Facilities, and to release said personal property from this Sublease, if (a) in the opinion of the District the property so sold or exchanged is no longer required or useful in connection with the operation of the Facilities, (b) the consideration to be received from the property is of a value substantially equal to the value of the property to be released, and (c) if the value of any such property shall, in the opinion of the County, exceed the amount of $200,000, the County shall have been furnished a certificate of an independent engineer or other qualified independent professional consultant (satisfactory to the County) certifying the value thereof and further certifying that such property is no longer required or useful in connection with the operation of the Facilities. In the event of any such sale, the full amount of the money or consideration received for the personal property so sold and released shall be paid to the County. Any money so paid to the County may, so long as the District is not in default under any of the provisions of this Sublease, be used upon the Written Request of the District either to prepay Base Rental pursuant to Section 7.02(c) or to purchase personal property, which property shall become a part of the Facilities leased hereunder. The County may require such opinions, certificates and other documents as it may deem necessary before permitting any sale or exchange of personal property subject to this Sublease or before releasing for the purchase of new personal property money received by it for personal property so sold.

ARTICLE VIII

COVENANTS

SECTION 8.01  Right of Entry. The County and its assignees shall have the right to enter upon and to examine and inspect the Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the County’s or the District’s rights or obligations under this Sublease, and (c) for all other lawful purposes.

SECTION 8.02  Liens. In the event the District shall at any time during of this Sublease cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Facilities, the District 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 District in, upon or about the Facilities and shall keep the Facilities free of any and all mechanics’ or materialmen’s liens or other liens against the Facilities or the County’s interest therein. In the event any such lien attaches to or is filed against the Facilities or the County’s interest therein, the District 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 District desires to contest any such lien it may do so 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 District shall forthwith pay and discharge said judgment. The District agrees to and shall, to the maximum extent permitted by law, indemnify and hold the County and the Trustee and their respective members, directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney’s fees) as a result of any such lien or claim of lien against the Facilities or the County’s interest therein.

SECTION 8.03 Quiet Enjoyment. The parties hereto mutually covenant that the District, by keeping and performing the covenants and agreements herein contained and not in default hereunder, shall at all times during of this Sublease peaceably and quietly have, hold and enjoy the Facilities without suit, trouble or hindrance from the County.

SECTION 8.04 County Not Liable. The County and its members, directors, officers, agents and employees shall not be liable to the District 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 Facilities. The District, to the extent permitted by law, shall indemnify and hold the County and its members, directors, officers, agents and employees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the operation of the Facilities, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Facilities regardless of responsibility for negligence, but excepting the active negligence of the person or entity seeking indemnity.

SECTION 8.05 Assignment and Subleasing. Neither this Sublease nor any interest of the District hereunder shall be mortgaged, pledged, assigned, sublet or transferred by the District by voluntary act or by operation of law or otherwise, except with the prior written consent of the County, which, in the case of subletting, shall not be unreasonably withheld; provided such subletting shall not affect the tax-exempt status of the interest on the 2020A Bonds. No such mortgage, pledge, assignment, sublease or transfer shall in any event affect or reduce the obligation of the District to make the District Base Rental Payments and Additional Payments required hereunder.

SECTION 8.06 Title to Facilities. During the term of this Sublease, the County shall hold a leasehold estate to the Facilities and any and all additions which comprise fixtures, repairs, replacement or modifications thereof, except for those fixtures, repairs, replacements or modifications which are added thereto by the District and which may be removed without damaging the Facilities, and except for any items added to the Facilities by the District pursuant
to Section 4.02 hereof. This provision shall not operate to the benefit of any insurance company if there is a rental interruption covered by insurance pursuant to Section 5.03 hereof.

Upon the termination or expiration of this Sublease, the County shall execute such conveyances, deeds and other documents as may be necessary to evidence the ownership of the Facilities by the District and to clarify the title of the District on the record thereof.

SECTION 8.07 Tax Covenants. The Authority and the County hereby covenant that they shall not take any action or inaction, or fail to take any action, or permit any action to be taken on their behalf or cause or permit any circumstances within their control to arise or continue, if such action or inaction would cause the interest on the 2020A Bonds to be included in gross income for federal income tax purposes. This covenant shall survive the payment in full of the 2020A Bonds.

If at any time the District is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under the Trust Agreement, the District shall so instruct County and the County will instruct the Authority or the Trustee, and the Trustee, the Authority or the appropriate officials of the County accompanied by a supporting Opinion of Bond Counsel, and the Trustee shall take such action as may be directed in accordance with such instructions.

Notwithstanding any provisions of this Section, if the District shall receive an Opinion of Bond Counsel to the effect that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the 2020A Bonds, the District may conclusively rely on such opinion in complying with the requirements of this Section and the Tax Certificate, and the covenants hereunder shall be deemed to be modified to that extent.

In furtherance of the covenants of the District set forth above, the District will comply with the Tax Certificate and will instruct the Trustee in writing as necessary to comply with the Tax Certificate. The Trustee, the Authority and the County may conclusively rely on any such written instructions, and the District hereby agrees to hold harmless the County, the Authority and the Trustee for any loss, claim, damage, liability or expense incurred by the County for any actions taken by the County in accordance with such instructions.

SECTION 8.08 Continuing Disclosure. The District hereby covenants and agrees that it will assist the County in complying with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Sublease, failure of the District to assist the County in complying with the Continuing Disclosure Agreement shall not be considered an event of default hereunder; however, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of 2020A Bonds Outstanding and provided satisfactory indemnification is provided to the Trustee, shall) or any Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to compel the District to comply with its obligations under this Section 8.08.
SECTION 8.09 Taxes. The District shall pay or cause to be paid all taxes and assessments of any type or nature charged to the County or affecting the Facilities or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the District shall be obligated to pay only such installments as are required to be paid during the term of this Sublease as and when the same become due.

The District shall also pay directly such amounts, if any, in each year as shall be required by the County for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines or interest arising out of any delay or failure by the District to pay any of the foregoing or failure to file or furnish to the County or the Trustee for filing in a timely manner any returns, hereinafter levied or imposed against the County or the Facilities, the rentals and other payments required hereunder or any parts thereof or interests of the District or the County or the Trustee therein by any governmental County.

The District may, at the District’s expense and in its name, in good faith contest any such taxes, assessments 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 County or the Trustee shall notify the District that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the County in the Facilities will be materially endangered or the Facilities, or any part thereof, will be subject to loss or forfeiture, in which event the District shall promptly pay such taxes, assessments or charges or provide the County with full security and bond against any loss which may result from nonpayment, in form satisfactory to the County and the Trustee.

SECTION 8.10 Purpose of Lease. The District covenants that during the term of this Sublease it will (a) use the Facilities for public purposes or cause them to be so used, (b) not vacate or abandon the Facilities or any part thereof, and (c) not make any use of the Facilities that would jeopardize the insurance coverage required by Article V hereof.

ARTICLE IX

DISCLAIMER OF WARRANTIES; RISK OF LOSS; VENDOR’S WARRANTIES; USE OF THE FACILITIES

SECTION 9.01 Disclaimer of Warranties; Risk of Loss. THE COUNTY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE FACILITIES OR THE FIRE DISTRICT PROJECT, OR WARRANTY WITH RESPECT THERETO. THE DISTRICT ACKNOWLEDGES THAT THE COUNTY IS NOT A MANUFACTURER OF THE FACILITIES OR THE PROJECT OR A DEALER THEREIN, THAT THE DISTRICT LEASES THE FACILITIES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED
RISKS ARE TO BE BORNE BY THE DISTRICT. In no event shall the County be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Sublease or the Fire District Project or the existence, furnishing, functioning or the District’s use of any item or products or services provided for in this Sublease or with respect to the Fire District Project.

Subject to Section 3.06 hereof, the District, whether or not covered by insurance or self-insurance, hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Facilities or the Fire District Project from any cause whatsoever, and no such loss of or damage to or liability arising from the Facilities or the Fire District Project shall relieve the District of the obligation to make the District Base Rental Payments, subject to Section 3.06 of this Sublease, or to perform any other obligation under this Facilities Lease. Whether or not covered by insurance or self-insurance, the District hereby agrees to reimburse Authority, the County and the Trustee (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Authority, the County or the Trustee, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Facilities Lease or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Facilities or the Fire District Project, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Facilities or the Fire District Project resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of District under or in connection with this Sublease or any material misrepresentation provided by District under or in connection with this Sublease. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Sublease or the termination of the term of this Sublease for any reason.

SECTION 9.02 Vendor’s Warranties. The County hereby irrevocably appoints the District its agent and attorney-in-fact during of this Sublease, so long as the District shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Facilities, which the County may have against the manufacturers, vendors and contractors of the Facilities. The District’s sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or vendor or contractor of the Facilities and the Fire District Project, as applicable, and not against the County, nor shall such matter have any effect whatsoever on the rights and obligations of the County with respect to this Sublease, including the right to receive full and timely payments hereunder. The District expressly acknowledges that the County makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the manufacturer, vendor or contractor with respect to the Facilities and the Fire District Project.

SECTION 9.03 Use of the Facilities. The District will not install, use, operate or maintain the Facilities improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The District shall provide all permits and licenses, if any, necessary for the installation and operation of the Facilities. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and
operation of the Facilities) 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 Facilities; provided, however, that the District 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 County, adversely affect the estate of the County in and to the Facilities or its interest or rights under this Sublease.

ARTICLE X

MISCELLANEOUS

SECTION 10.01  Law Governing.  This Sublease shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist.

SECTION 10.02  Notices.  All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests, agreements or promises or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid:

If to the County:  County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110
Attention:  Director of Finance

If to the District:  [Fire District of County of Santa Clara
14700 Winchester Boulevard
Los Gatos, CA  95032-1818
Attention:  Director of Business Services]

If to the Trustee:  U.S. Bank National Association
One California Street, Suite 1000
Mail Code:  SF-CA-SFCT
San Francisco, CA 94111
Attention:  Global Corporate Trust Services

or to such other addresses as the respective parties may from time to time designate by notice in writing. A copy of any such notice or other document herein referred to and delivery to any party shall also be delivered to the Trustee.

SECTION 10.03  Validity and Severability.  If for any reason this Sublease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the County or by the District, or if for any reason it is held by such a court that any of the covenants and conditions of the District hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Sublease is and shall be deemed
to be a lease under which the rentals are to be paid by the District annually in consideration of the right of the District to possess, occupy and use the Facilities, and all of the rental and other terms, provisions and conditions of this Sublease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

SECTION 10.04 Net-Net-Net Lease. This Sublease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the rentals provided for herein shall be an absolute net return to the County, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.05 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Sublease.

SECTION 10.06 Amendment or Termination. The County and the District may at any time agree to the amendment or termination of this Sublease; provided, however, that the County and the District agree and recognize that this Sublease is entered into in accordance with the terms of the Trust Agreement, and accordingly, that any such amendment or termination shall only be made or effected in accordance with and subject to the terms of the Trust Agreement.

SECTION 10.07 Execution. This Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease. It is also agreed that separate counterparts of this Sublease may separately be executed by the County and the District, all with the same force and effect as though the same counterpart had been executed by both the County and the District.
IN WITNESS WHEREOF, the County and the District have caused this Sublease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

COUNTY OF SANTA CLARA,

as Lessor

[SEAL]

By: __________________________

Cindy Chavez

President, Board of Supervisors of the
Country of Santa Clara, State of California

Attest: Megan Doyle, Clerk
of the Board of Supervisors

By: __________________________

Deputy Clerk

Approved as to form and legality:

[JAMES R. WILLIAMS], County Counsel

By: __________________________

Deputy County Counsel

SANTA CLARA COUNTY CENTRAL FIRE PROTECTION DISTRICT,
as Lessee

________________________

Cindy Chavez

Chairperson of the Board of Directors

________________________

Clerk
EXHIBIT A

THE FACILITIES

1. 1315 Dell Avenue, Campbell, California 95008

   The real property situated in the City of Campbell, County of Santa Clara, State of California, described as follows:

   Parcel 1, as shown upon that certain Map entitled, "Parcel Map being a subdivision of Lots 2 and 5 as shown on that certain Map entitled, 'Mrs. W.J. Parr Tract' filed for record on December 19, 1890 in Book E of Maps, page 63, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on October 30, 2000 in Book 733 of Maps, at pages 32 and 33.

   APN: 424-33-118

2. 20215 Stevens Creek Boulevard, Cupertino, California 95014

   The real property situated in the City of Cupertino, County of Santa Clara, State of California, described as follows:
### EXHIBIT B

**DISTRICT RENTAL PAYMENT SCHEDULE**

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## EXHIBIT C

### LEASE TERM

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