

FIFTH AMENDMENT TO MASTER FACILITY LEASE

This Fifth Amendment to Master Facility Lease, dated as of ____ 1, 2013, between the SAN MATEO COUNTY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers authority, duly organized and existing pursuant to an Agreement entitled “Joint Exercise of Powers Agreement by and between the County of San Mateo and the Community Development Commission for the County of San Mateo,” (herein called the “Authority”), as lessor, and the COUNTY OF SAN MATEO, a political subdivision organized and validly existing under the Constitution and laws of the State of California (herein called the “County”), as lessee;

W I T N E S S E T H:

WHEREAS, the County has leased certain real property and the improvements thereon to the Authority by a lease, entitled “Master Site Lease (San Mateo County Health Center)” and dated as of April 15, 1994 and recorded on May 18, 1994 in the office of the County Recorder of the County, under Recorder’s Serial No. 94089151, as amended by a First Amendment to Master Site Lease, dated as of April 1, 1995 and recorded on April 4, 1995 in the office of the County Recorder of the County under Recorder’s Serial No. 95-003034, a Second Amendment to Master Site Lease, dated as of December 1, 1997 and recorded on January 14, 1998 in the office of the County Recorder of the County under Recorder’s Serial No. 98-005126, a Third Amendment to Master Site Lease, dated as of January 1, 1999 and recorded on February 11, 1999 in the office of the County Recorder of the County under Recorder’s Serial No. 99-024505, and a Fourth Amendment to Master Site Lease, dated as of August 1, 2001 and recorded on September 18, 2001 in the office of the County Recorder of the County under Recorder’s Serial No. 2001-146479; and

WHEREAS, this Fifth Amendment to Master Facility Lease is entered into to amend and supplement in certain respects a lease between the Authority and the County entitled “Master Facility Lease (San Mateo County Health Center)”, dated as of April 15, 1994 and recorded on May 18, 1994 in the office of the County Recorder of the County, State of California, under Recorder’s Serial No. 94089152, as amended by the First Amendment to Master Facility Lease, dated as of April 1, 1995 and recorded on April 4, 1995 in the office of the County Recorder of the County, under Recorder’s Serial No. 95-033035, the Second Amendment to Master Facility Lease, dated as of December 1, 1997 and recorded on January 14, 1998 in the office of the County Recorder of the County, under Serial No. 98-005127, the Third Amendment to Master Facility Lease, dated as of January 1, 1999 and recorded on February 11, 1999 in the office of the County Recorder of the County under Serial No. 99-024506, and the Fourth Amendment to Master Facility Lease, dated as of August 1, 2001 and recorded on September 18, 2001 in the office of the County Recorder of the County under Recorder’s Serial No. 2001-146180 (herein together with all supplements and amendments thereto, collectively called the “Facility Lease”) and to add to the property leased pursuant to the Master Facility Lease certain additional real property on which a County fire station will be reconstructed and rehabilitated [and to extend the time certain real property is leased hereunder until Project Phase XI is completed and ready for occupancy];

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE XV

Lease Revenue Bonds (Capital Projects) Series 2013 and Project Phase XI

Section 15.01 Effective Date. This Fifth Amendment to Master Facility Lease shall become effective on the date of recordation of this instrument in the office of the County Recorder of the County, State of California, or on January 1, 2014, whichever is earlier, and such date of commencement shall be hereinafter referred to as the “effective date” and on the effective date the additional real property hereby added to the Facility Lease and set forth in Exhibit A hereto shall be encumbered by the Facility Lease and references to Demised Premises in the Facility Lease shall include the real property described in Exhibit A.

Section 15.02 Additional Definitions. From and after the effective date of this instrument, the following new definitions shall be added to Section 1.01 of the Facility Lease, in alphabetical order, to read as follows:

Fifth Amendment to Master Facility Lease

The term “Fifth Amendment to Master Facility Lease” means that Fifth Amendment to Master Facility Lease between the Authority and the County, dated as of ____ 1, 2013.

Project Phase XI

The term “Project Phase XI” means a Subsequent Phase of the Project consisting of the County fire station located at the [Skylonda location]

Series 2013 Bonds

The term “Series 2013 Bonds” means the bonds issued by the Authority under and pursuant to the Trust Agreement and the Seventh Supplemental Trust Agreement, the proceeds of which will be applied to the acquisition, construction and equipping of Project Phase XI and the refinancing of certain prior bonds of the Authority.

Section 15.03 Term of Master Facility Lease. The Term of the Master Facility Lease shall not change as a result of this amendment.

Section 15.04 Amendment to Section 2.02. From and after the effective date of this instrument, there shall be added to Section 2.02 of the Facility Lease the following paragraph, which shall read as follows:

“(j) Occupancy of Project Phase XI. The County shall take possession of Project Phase XI upon the substantial completion thereof.”

Section 15.05 Amendment to Section 2.04 of the Facility Lease. The amendments in this Section 15.05 shall become effective on the same terms and at the same time set forth in Section 49.01 of the Trust Agreement. [The purchase of Bonds issued pursuant to the Trust Agreement after the effective date of the Trust Agreement as amended by the Seventh Supplemental Trust Agreement shall constitute the consent of such purchasers, as Bondholders, to the amendments set forth in this Section.] Subject to the foregoing, Section 2.04 of the Facilities Lease is hereby amended and restated in its entirety as follows:

SECTION 2.04. Substitution and Release. (1) The County and the Authority may substitute real property as part of the Demised Premises and the Project for purposes of the Site Lease and this Lease, but only after the County shall have filed with the Authority and the Trustee, with copies to each rating agency then providing a rating for the Bonds, all of the following:

(a) Executed copies of the Site Lease and this Lease or amendments thereto containing the amended description of the Project and the Demised Premises, including the legal description of the Demised Premises as modified if necessary.

(b) A Certificate of the County with copies of the Site Lease and this Lease, if needed, or amendments thereto containing the amended description of the Project and the Demised Premises stating that such documents have been duly recorded in the official records of the County Recorder of the County.

(c) A Certificate of the County that the annual fair rental value of the Project and the Demised Premises which will constitute the Project and the Demised Premises after such substitution (which may be based on the construction or acquisition cost, replacement cost or insured value of such facility to the County) will be at least equal to 100% of the maximum amount of Base Rental Payments becoming due in the then current year ending July 15 or in any subsequent year ending July 15.

(d)(i) A California Land Title Association leasehold owner's policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing policy or policies resulting in title insurance with respect to the Demised Premises after such substitution in an amount at least equal to the amount of such insurance provided with respect to the Demised Premises prior to such substitution; each such insurance instrument, when issued, shall name the Trustee as the insured, and shall insure the leasehold estate of the Authority in such substituted property subject only to such exceptions as do not substantially interfere with the County's right to use and occupy such substituted property and as will not result in an abatement of Base Rental Payments payable by the County under this Lease; or

(ii) An Opinion of Counsel (as such term is defined in the Trust Agreement) or Certificate of the County stating that, based upon review of such instruments, certificates or any other matters described in such Opinion of Counsel or Certificate of the County, the County has good merchantable title to the Project and the Demised Premises which will constitute the Project and the Demised Premises after such substitution. The term "Good Merchantable Title" shall mean such title, as in the Opinion of Counsel or Certificate of the County is satisfactory and sufficient for the needs and operations of the County, subject only to Permitted Encumbrances.

(e) A Certificate of the County stating that such substitution does not adversely affect the County's use and occupancy of the Project and the Demised Premises.

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

(2) [RELEASE PROVISIONS TO COME]

Section 15.06 Use of Proceeds of the Series 2013 Bonds. The parties hereto agree that the proceeds of the Bonds will be used by the Authority to refinance certain outstanding Bonds of the Authority and to finance the acquisition, construction and equipping of Project Phase XI and to pay costs related thereto as specified in the Seventh Supplemental Trust Agreement. For the purposes of Project Phase XI, the Authority hereby appoints the County as its agent to design and construct Project Phase XI and the County agrees to such appointment. The County may amend Project Phase XI by delivering a certificate to the Authority and the County containing the amendment and certifying that such amendment does not adversely affect the exclusion from gross income of interest on the Bonds.

Section 15.07 Increase to Base Rental Payments; Prepayment. From and after the effective date of this instrument, Exhibit B attached to the Facility Lease, the Base Rental Payments, shall be amended and restated as set forth in Exhibit B attached hereto. The County may prepay Base Rental and cause a corresponding redemption of Bonds at the times and in the manner contemplated by the Trust Agreement.

Section 15.08 Project Phase XI and Release of Flood Park. The County hereby represents and warrants that the County will take possession of and will occupy Project Phase XI upon its substantial completion and the Demised Premises thereof throughout the term of this Lease under the terms and provisions of this Lease. The County covenants and agrees to proceed to design and construct Project Phase XI, from proceeds of the Series 2013 Bonds, with due diligence until completion. Upon completion of Project Phase XI and the County taking possession of and occupying Project Phase XI, the portion of the Demised Premises known as Flood Park shall be released pursuant to the Master Facility Lease provided that the reduction in debt service on the Refunded Bonds generated by the refunding is greater than or equal to the debt service then due on Flood Park from the Closing Date through the end of the lease on such facility.

Section 15.09 Title Insurance. The County shall obtain upon the execution and delivery of this Fifth Amendment to Master Facility Lease policies of title insurance or supplements to existing policies on the Demised Premises[, in form and substance and in an amount satisfactory to the Bond Insurer,] issued by a company of recognized standing duly authorized to issue the same, subject only to Permitted Encumbrances. Proceeds of such insurance shall be delivered to the Trustee as a prepayment of rent pursuant to Section 7.02 and shall be applied by the Trustee to the redemption of Bonds pursuant to Section 4.01 [and Section 37.01] of the Trust Agreement.

Section 15.10 Continuing Disclosure. The County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Lease, failure of the County to comply 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 Owners of at least 25% aggregate principal amount of 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 County to comply with its obligations under this Section 15.09.

Section 15.11 Trust Agreement. The parties hereto acknowledge that the County is a third-party beneficiary to the Trust Agreement, and the Authority hereby agrees that during the term of the Facility Lease and provided the County is not in default hereunder, it will not amend the Trust Agreement in any manner materially adverse to the interests of the County.

Section 15.12 Facility Lease in Full Force and Effect. Except as in this Fifth Amendment to Master Facility Lease expressly provided, the Facility Lease shall continue in full force and effect in accordance with the terms and provisions thereof, as amended and supplemented hereby.

Section 15.13 Execution in Counterparts. This Fifth Amendment to Master Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Fifth Amendment to Master Facility Lease. It is also agreed that separate counterparts of this Fifth Amendment to Master Facility Lease may separately be executed by the Authority and the County, all with the same force and effect as though the same counterpart had been executed by both the Authority and the County.

IN WITNESS WHEREOF, the Authority and the County have caused this Fifth Amendment to Master Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

SAN MATEO COUNTY JOINT POWERS
FINANCING AUTHORITY
as Lessor

By _____
President

COUNTY OF SAN MATEO,
as Lessee

By _____
Assistant County Manager

EXHIBIT A

Addition to Demised Premises

Project Phase XI

(Skylonda Fire Station, San Mateo County, California)

All that certain real property situated in the County of San Mateo, State of California, described as follows.

[Insert legal description.]

EXHIBIT B

Aggregate Base Rental Payment Schedule - Phases I through XI

[to come from Financial Advisor]

[INSERT NOTARY FORMS]

CONSENT OF TRUSTEE

The undersigned, as trustee under the Trust Agreement dated as of April 15, 1994, as amended, between the San Mateo County Joint Powers Financing Authority (the “Authority”) and the trustee hereby acknowledges and consents to the execution and delivery of the Fifth Amendment to Master Facility Lease dated as of ____ 1, 2013, between the Authority and the County of San Mateo (the “County”) relating to the Master Facility Lease (San Mateo County Health Center) dated as of April 15, 1994, between the Authority and the County.

U.S. BANK TRUST, NATIONAL
ASSOCIATION, as Trustee

By _____
Authorized Officer

CONSENT OF BOND INSURER

The undersigned, as Bond Insurer on certain series of outstanding Bonds, issued pursuant to the Trust Agreement dated as of April 15, 1994, between the San Mateo County Joint Powers Financing Authority (the “Authority”) and the trustee, as amended, hereby consents to the execution and delivery of the Fifth Amendment to Master Facility Lease dated as of _____ 1, 2013, between the Authority and the County of San Mateo (the “County”) relating to the Master Facility Lease (San Mateo County Health Center) dated as of April 15, 1994, between the Authority and the County. The Bond Insurer makes no representations as to the adequacy or sufficiency of this consent for the purposes of the parties to said Fifth Amendment to Master Facility Lease. Execution of this consent by the Bond Insurer shall not be construed or deemed to be made for the benefit of any other person or entity, including without limitation, the Owners of the Bonds, nor does such consent evidence any position, affirmative or negative, as to whether action by the Owners of the Bonds is required in addition to the execution of this consent by the Bond Insurer.

ASSURED GUARANTY MUNICIPAL CORP.

By _____
Authorized Officer

Recording requested by
and return to:

COUNTY OF SAN MATEO
c/o Orrick, Herrington & Sutcliffe
The Orrick Building
405 Howard St.
San Francisco, California 94105
Attention: John Palmer, Esq.

Exempt from Recording Fee Pursuant to
Government Code Section 6103

FIFTH AMENDMENT TO MASTER FACILITY LEASE

by and between

SAN MATEO COUNTY JOINT POWERS FINANCING AUTHORITY

and the

COUNTY OF SAN MATEO

Dated as of ____ 1, 2013

(Amending the Master Facility Lease (San Mateo County
Health Center) dated as of April 15, 1994)

TABLE OF CONTENTS

	Page
ARTICLE XV	
LEASE REVENUE BONDS (CAPITAL PROJECTS) SERIES 2013 AND PROJECT PHASE XI	2
Section 15.01 Effective Date	2
Section 15.02 Additional Definitions	2
Section 15.03 Term of Master Facility Lease	2
Section 15.04 Amendment to Section 2.02.....	2
Section 15.05 Amendment to Section 2.04 of the Facility Lease	3
Section 15.06 Use of Proceeds of the Series 2013 Bonds	4
Section 15.07 Increase to Base Rental Payments; Prepayment	4
Section 15.08 Project Phase XI and Release of Flood Park	4
Section 15.09 Title Insurance	4
Section 15.10 Continuing Disclosure	5
Section 15.11 Trust Agreement	5
Section 15.12 Facility Lease in Full Force and Effect.....	5
Section 15.13 Execution in Counterparts.....	5